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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% ***Judgment reserved on: 10.03.2026***
Judgment pronounced on: 04.05.2026

\+ O.M.P. (COMM) 469/2025 & I.A. 28001/2025 (For Stay)

M/S MBL INFRASTRUCTURE LTD .....Petitioner
Through: Ms. Anusuya Salwan, Ms. Nikita Salwan, Mr. Rachit Wadhwa and Mr. Bankim Garg, Advocates.

versus

M/S PRADEEP COLONISERS AND SUPPLIERS PVT LTD .....Respondent
Through: Mr. Gaurav Gupta, Mr. Rahul Sinha, Ms. Muskan Rathore, Ms. Rupal Gupta and Mr. Shivee Pandey Sinha, Advocates.

\+ O.M.P. (COMM) 470/2025 & I.A. 28061/2025 (For Remand of limited portions of the impugned award for fresh adjudication)

M/S PRADEEP COLONISERS AND SUPPLIERS PVT LTD .....Petitioner
Through: Mr. Gaurav Gupta, Mr. Rahul Sinha, Ms. Muskan Rathore, Ms. Rupal Gupta and Mr. Shivee Pandey Sinha, Advocates.

versus

M/S MBL INFRASTRUCTURES LIMITED .....Respondent
Through: Ms. Anusuya Salwan, Ms. Nikita Salwan, Mr. Rachit Wadhwa and Mr. Bankim Garg, Advocates.

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\+ OMP (ENF.) (COMM.) 281/2025, EX.APPL.(OS) 1851/2025 (U/O XXI Rule 41) & EX.APPL.(OS) 1852/2025 (Seeking securing of the award by way of deposit before this Hon'ble court)

M/S PRADEEP COLONISERS AND SUPPLIERS PVT LTD
.....Decree Holder
Through: Mr. Gaurav Gupta, Mr. Rahul Sinha, Ms. Muskan Rathore, Ms. Rupal Gupta and Mr. Shivee Pandey Sinha, Advocates.

versus

M/S MBL INFRASTRUCTURE LTD .....Judgement Debtor
Through: Ms. Anusuya Salwan, Ms. Nikita Salwan, Mr. Rachit Wadhwa and Mr. Bankim Garg, Advocates.

CORAM:
HON'BLE MR. JUSTICE HARISH VAIDYANATHAN SHANKAR

JUDGMENT

HARISH VAIDYANATHAN SHANKAR, J.

1. With the consent of the parties, the present Petitions were taken up for consideration together, as they arise from the same arbitral award. At the outset, this Court heard the parties on a foundational question of law which arises for determination. The resolution of this issue has a significant bearing on the adjudication of the present Petitions and is likely to impact them either wholly or in part.

2. These petitions arise out of the **Arbitral Award dated**

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22.07.2025[1] passed by the learned Sole Arbitrator in arbitral proceedings bearing DIAC/3753/02-22, titled *"M/s. MBL Infrastructure Limited vs. Pradeep Colonisers and Suppliers Pvt. Ltd."*. By the Impugned Arbitral Award, the learned Arbitrator adjudicated upon the eight issues framed for determination and, in doing so, partly allowed Claim Nos. 1 to 3 preferred by **MBL Infrastructure Ltd.**[2]. Further, while upholding the maintainability of the counter-claims filed by **Pradeep Colonisers & Suppliers Pvt. Ltd.**[3], the learned Arbitrator partly allowed Counter Claim Nos. 1 and 7.

3. In the present Judgment, the principal issue that arises for adjudication is whether, in the facts and circumstances of the case, the counter-claims were maintainable before the learned Arbitrator, as has been upheld in the Impugned Award.

4. It is pertinent to note that the determination of the aforesaid issue will have a direct bearing on the further course of adjudication. In the event this Court holds in favour of Pradeep Colonisers on the issue of maintainability, the merits of the claims and counter-claims, as decided by the learned Arbitrator, would then require further consideration. Such determination would also have a consequential impact on the execution petition instituted by Pradeep Colonisers as well. Conversely, if the issue is decided against Pradeep Colonisers, the same would materially affect the fate of the present petitions arising out of the Impugned Award.

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[1] Impugned Arbitral Award
[2] MBL Infrastructure
[3] Pradeep Colonisers

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PROLOGUE:

5. ***O.M.P. (COMM) 469/2025*** has been filed by MBL Infrastructure under Section 34 of the A&C Act, seeking the setting aside of the Impugned Arbitral Award passed by the learned Arbitrator. The Petitioner therein challenges the findings of the learned Arbitral Tribunal on the ground, *inter alia*, that the Impugned Award suffers from errors apparent on the face of the record and is therefore liable to be set aside.

6. ***O.M.P. (COMM) 470/2025*** has been filed by Pradeep Colonisers under Section 34(2)(a)(iv) read with Section 34(2-A) of the A&C Act, seeking partial setting aside of the Impugned Arbitral Award. The challenge is limited to specific portions of the Award. The Petitioner therein has, in particular, assailed the grant of Claim No. 1 along with interest in favour of MBL Infrastructure. The adjudication of Claim No. 2 is also challenged on the ground that the said claim is not arbitrable. Further, the Petitioner therein contests the rejection of certain portions of the Counterclaim. According to the Petitioner, the Impugned Arbitral Award, to the extent it deals with the aforesaid aspects, is vitiated by patent illegality and suffers from jurisdictional errors.

7. The Execution Petition being ***O.M.P.(ENF.)(COMM) 281/2025*** has been instituted by Pradeep Colonisers under Section 36 of the A&C Act, seeking enforcement of the Impugned Arbitral Award, whereby the learned Tribunal, after adjusting the allowed claims and counterclaims of the parties, directed the payment of a net amount of Rs. 5,35,76,675/- in favour of the Pradeep Colonisers along with post-award interest at the rate of 7.5% per annum, in the event of non-

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payment within the stipulated period i.e., four months from the date of the Award.

8. Since the above matters arise out of the same Arbitral Award and involve overlapping factual and legal issues, they are being considered together. For the sake of convenience and brevity, the parties shall hereinafter be referred to in the same manner as they were arrayed before the learned Arbitral Tribunal, *namely,* MBL Infrastructure as the "***Claimant***" and Pradeep Colonisers as the "***Respondent***".

9. For the sake of clarity and to delineate the scope of the present adjudication, the issues framed by the learned Arbitrator, as recorded in the Impugned Award, are reproduced hereunder:

> "18. Based upon the averments in the Statement of Claim and Statement of Defence, Rejoinder filed by the Claimant and other materials on record the following issues are framed for determination: -
>
> 1. Whether the Respondent has committed breach of the terms of the Work Order dated 23.04.2015 as alleged by the Claimant? (**OPC**)
> 2. Whether the Claimant has unilaterally and illegally terminated the Work Order dated 23.04.2015 and the Amended Work Order dated 20.11.2016 executed between the Claimant and the Respondent as alleged by the Respondent? (**OPR**)
> 3. Whether the Respondent is responsible for termination of the Main contract dated 02.03.2015 that was executed between the Claimant and Government of Bihar? (**OPC and OPR**)
> 4. Whether the Claimant is entitled to the Claims No. 1 to 8 as claimed in the Statement of Claim? If yes, to what extent?
> 5. Whether the Respondent is entitled to all or any of the Counter-claims No.1 to 8? If yes, to what extent?
> 6. <u>Whether the Counter Claims of the Respondent-Counter Claimant are not maintainable as per the provisions of IBC Code 2016? (**OPC**)</u>
> 7. Which party is entitled to interest? If so, from which date and at what rate?
> 8. Which party is entitled to cost? If so, what is the reasonable cost?"
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> ***(emphasis supplied)***

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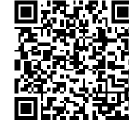

10. Although multiple issues were framed and adjudicated by the learned Arbitral Tribunal, the controversy in the present proceedings primarily centres around the findings returned on Issue No. 6. Needless to say, the determination of this issue has a direct and substantial bearing on certain other issues, particularly Issue No. 5 and, to an extent, Issue No. 7, as they are intrinsically connected and impact the relief granted under the Impugned Award, especially in favour of the Respondent.

11. Issue No. 6 pertains to the maintainability of the Respondent's counterclaims in light of the **Corporate Insolvency Resolution Process**[4] initiated against the Claimant under the **Insolvency and Bankruptcy Code, 2016**[5], culminating in the approval of a resolution plan up to the level of the Hon'ble Supreme Court. The Claimant, in support of its objection before the Arbitral Tribunal, contended that upon approval of the resolution plan, all claims against the Claimant not forming part of the approved plan stood extinguished. Consequently, it was urged that the Respondent's counterclaims could not be pursued or adjudicated in the arbitral proceedings.

12. The learned Arbitral Tribunal, however, rejected the aforesaid contention and held that the counterclaims of the Respondent were maintainable, notwithstanding the approval of the resolution plan under the CIRP.

13. During the hearing held on 10.03.2026 before this Court, while considering the present petitions, the preliminary issue arose with respect to the correctness of the findings returned by the learned

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[4] CIRP
[5] IBC

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Arbitrator on Issue No. 6. The parties were, accordingly, heard extensively on this limited but foundational question. The present Judgment, therefore, first proceeds to adjudicate upon the validity of the findings of the learned Arbitrator on the said issue. As noted hereinabove, the determination of this issue is likely to have a substantial bearing on the outcome of these petitions, either in whole or in part.

BRIEF FACTS:

14. For the purposes of adjudicating the limited issue that has arisen here, the relevant and necessary factual matrix is set out hereunder:

a) The Claimant, MBL Infrastructure, was awarded a contract by the Water Resources Department, Government of Bihar, for restoration works pertaining to the Western Gandak Canal System, pursuant to a **parent contract dated 02.03.2015**[6].

b) In connection with the execution of a portion of the said works, the Claimant issued a **Work Order dated 23.04.2015**[7] in favour of the Respondent, Pradeep Colonisers, for the execution of works relating to the restoration of certain sub-distributaries under the project.

c) In terms of the said Work Order, the Respondent undertook execution of specified works at the project site and periodically raised **Running Account Bills**[8] corresponding to the work executed. The Respondent asserts that it had executed substantial portions of the work and raised RA Bills from time to time,

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[6] Parent Contract
[7] Work Order
[8] RA Bills

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whereas the Claimant made only partial payments after making various deductions.

d) During the subsistence of the contractual relationship between the parties, certain developments occurred in relation to the parent contract between the Claimant and the Government of Bihar. It is not in dispute that the parent contract came to be foreclosed by the Water Resources Department on 26.07.2016, and subsequently, the said contract was terminated by the Government of Bihar on 13.01.2018. The consequences flowing from the foreclosure and termination of the parent contract formed part of the disputes between the parties in the arbitral proceedings.

e) Parallelly, the Claimant company was subjected to CIRP under the IBC. The CIRP was initiated upon an application filed by RBL Bank Ltd. under Section 7 of the IBC before the learned **National Company Law Tribunal, Kolkata Bench**[9], in Company Petition (IB) No. 170/KB/2017. By an Order dated 30.03.2017, the learned NCLT admitted the said petition, declared a moratorium under Section 14 of the IBC, and appointed Mr. Atanu Mukherjee as the **Interim Resolution Professional**[10] to take over the management of the Claimant company. Later, *vide* the Order dated 18.05.2017 passed by the learned NCLT, the IRP was replaced by Mr. Sanjeev Ahuja as Resolution Professional.

f) Pursuant to the commencement of CIRP, the IRP issued a public

[9] NCLT
[10] IRP

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announcement inviting claims from the creditors of the Claimant. In response thereto, the Respondent submitted its claim in Form-B on 14.04.2017, asserting that a sum of Rs. 7,29,59,412/- was due and payable by the Claimant towards unpaid RA Bills and other deductions made under the Work Order dated 23.04.2015.

g) During the CIRP proceedings, the claim of the Respondent was examined by the IRP and, according to the Respondent, the claim was partially verified to the extent of Rs. 1,87,57,863/-, which was reflected in the List of Creditors prepared by the IRP, wherein the Respondent was shown as a creditor at Serial No. 440.

h) Subsequently, the Committee of Creditors approved a Resolution Plan dated 22.11.2017 submitted by Mr. Anjani Kumar Lakhotia, who was stated to be the promoter of the Claimant company. The said Resolution Plan was approved by the learned NCLT by Order dated 18.04.2018.

i) It is a matter of record that in the approved Resolution Plan, the claims of the Respondent did not find mention, and accordingly, the same stood rejected.

j) The approval of the Resolution Plan was challenged by certain creditors before the **National Company Law Appellate Tribunal**[11], which, by Judgment dated 16.08.2019, upheld the approval of the Resolution Plan and dismissed the appeals.

k) The matter thereafter travelled to the Hon'ble Supreme Court of India in Civil Appeal No. 8411/2019, titled "*Bank of Baroda v. MBL Infrastructures Ltd. & Ors*." During the pendency of the

[11] NCLAT

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said proceedings, the Respondent/ Pradeep Colonisers filed I.A. No. 138207/2021 seeking impleadment on the ground that it was an operational creditor of the Claimant. By Order dated 26.10.2021, the Hon'ble Supreme Court allowed the said impleadment application of the Respondent/ Pradeep Colonisers.

l) The Hon'ble Supreme Court ultimately disposed of Civil Appeal No. 8411/2019 by Judgment dated 18.01.2022, reported as *(2022) 5 SCC 661*, wherein certain observations were made regarding the eligibility of the promoter submitting the resolution plan. However, the Hon'ble Supreme Court declined to interfere with the Resolution Plan, having regard to the peculiar facts and circumstances of the case as well as the overarching objective of the IBC, and accordingly, the Resolution Plan stood upheld.

m) In the *interregnum*, certain developments took place, and eventually, on 01.02.2022, at the instance of the Claimant/MBL Infrastructure, an Arbitral Tribunal was constituted by this Court by appointing Hon'ble Ms. Justice R. Banumathi (Retd.), former Judge of the Hon'ble Supreme Court, as the Sole Arbitrator.

n) The arbitral proceedings thereafter commenced under the aegis of the Delhi International Arbitration Centre. Before the learned Arbitral Tribunal, the Claimant preferred multiple claims against the Respondent, while the Respondent, in turn, raised its counterclaims.

o) Besides contesting the matter on merits, the Claimant raised a preliminary objection to the maintainability of the counterclaims filed by the Respondent. It was contended that, in view of the CIRP initiated against the Claimant and the subsequent approval

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of the Resolution Plan under the IBC, the counterclaims raised by the Respondent, not having been included in the approved Resolution Plan, stood extinguished and, therefore, could not be pursued in arbitration.

p) In light of the aforesaid objection, the learned Arbitral Tribunal framed Issue No. 6, concerning whether the counterclaims of the Respondent were not maintainable pursuant to the provisions of the IBC.

q) By the Impugned Arbitral Award dated 22.07.2025, the learned Tribunal rejected the said objection and held that the Respondent's counterclaims were maintainable notwithstanding the finality of the CIRP proceedings. The learned Tribunal accordingly proceeded to adjudicate the counterclaims on the merits. Upon such adjudication, Counter-Claim No. 1, relating to unpaid R.A. Bills, was partly allowed, and a sum of Rs. 6,52,59,317/- was awarded in favour of the Respondent, along with further interest, to become payable upon expiry of four months. The remaining counterclaims were rejected. Simultaneously, the learned Arbitrator partly allowed Claim Nos. 1 to 3 in favour of the Claimant, awarding a sum of Rs. 1,16,82,642/-.

r) Aggrieved by different portions of the Impugned Award, both parties have approached this Court by way of petitions under Section 34 of the A&C Act. The Claimant, in *O.M.P.(COMM) 469/2025*, seeks the setting aside of the Award in its entirety, whereas the Respondent, in *O.M.P.(COMM) 470/2025*, seeks partial setting aside thereof.

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s) The Respondent has also instituted the accompanying execution proceedings, being *O.M.P.(ENF.)(COMM) 281/2025*, seeking enforcement of the net monetary relief granted under the Impugned Arbitral Award.

t) In the aforesaid circumstances, the present petitions have been placed before this Court.

u) At this stage, the central controversy pertains to the findings returned by the learned Arbitrator, particularly with respect to the issue of maintainability and adjudication of the counterclaims filed by the Respondent. This issue has a direct bearing on reliefs granted under the Impugned Award in favour of the Respondent and, consequently, on the outcome of the present petitions as well.

CONTENTIONS ON BEHALF OF THE CLAIMANT/ MBL INFRASTRUCTURE:

15. On behalf of the Claimant, the submissions advanced may be summarised as follows:

I. Learned counsel for the Claimant has submitted that the Impugned Arbitral Award is liable to be set aside under Section 34 of the A&C Act, insofar as the learned Arbitral Tribunal has held that the counterclaims of the Respondent are maintainable despite the completion of the CIRP under the IBC. It has been contended that the said finding, recorded while deciding Issue No. 6, forms the very foundation upon which the learned Arbitral Tribunal proceeded to adjudicate Issue No. 5 and grant monetary relief to the Respondent under Counter-Claim No. 1, as well as, in part, Issue No. 7 concerning future interest. It has,

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therefore, been submitted that the Impugned Award is *ex facie* contrary to the statutory scheme of the IBC, as well as the binding precedents of the Hon'ble Supreme Court.

II. Learned counsel has submitted that the Claimant company had undergone the CIRP pursuant to an application filed by RBL Bank Ltd. under Section 7 of the IBC before the learned NCLT, which was admitted by Order dated 30.03.2017. Consequent upon the admission of the petition, a moratorium under Section 14 of the IBC was imposed and an IRP was appointed to take over the management of the corporate debtor.

III. It has been submitted that pursuant to the statutory public announcement inviting claims from creditors, the Respondent submitted its claim before the IRP in Form B dated 14.04.2017, alleging that a sum of Rs. 7,29,59,412/- was due and payable from the Claimant. The said claim was duly processed within the CIRP framework and was subject to the resolution mechanism contemplated under the IBC.

IV. Learned counsel has submitted that the Resolution Plan dated 22.11.2017 came to be approved by the Committee of Creditors and thereafter by the learned NCLT, by order dated 18.04.2018 under Section 31(1) of the IBC. The said order attained finality when the learned NCLAT dismissed the appeals preferred by certain creditors by judgment dated 16.08.2019.

V. The legality of the resolution plan was thereafter considered by the Hon'ble Supreme Court in Civil Appeal No. 8411/2019, decided on 18.01.2022. Learned counsel has submitted that the Hon'ble Supreme Court ultimately declined to disturb the

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resolution plan and allowed it to continue in operation, thereby giving finality to the resolution process undertaken under the IBC.

VI. Learned counsel has contended that once the resolution plan was approved by the learned Adjudicating Authority, i.e., NCLT, under Section 31(1) of the IBC, the statutory consequences provided therein necessarily followed. Section 31(1) of the IBC expressly provides that an approved resolution plan shall be binding on the corporate debtor, its employees, members, creditors and all other stakeholders. The legislative intent underlying the provision is that the approval of the resolution plan results in a final and binding settlement of all claims against the corporate debtor.

VII. It has therefore been submitted that all claims which are not incorporated in the approved resolution plan stand extinguished by operation of law, and no creditor, including the Respondent, can thereafter pursue independent proceedings to enforce such claims.

VIII. It has been urged on behalf of the Claimant that the Respondent, if aggrieved by the exclusion of its claim from the approved Resolution Plan, ought to have pursued the statutory remedies available under the IBC before the appropriate fora.

IX. It has further been contended that the Respondent, however, did not challenge the Resolution Plan either before the learned NCLT or the learned NCLAT, as contemplated under the statutory framework of the IBC. Instead, the Respondent merely sought impleadment before the Hon'ble Supreme Court in the

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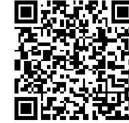

proceedings arising out of Civil Appeal No. 8411/2019, without assailing the Resolution Plan itself, on merits. Having failed to invoke the appropriate remedies under the IBC at the relevant stage, the Respondent cannot now be permitted to reagitate the very same claim through arbitral proceedings.

X. It has also been submitted that although the Hon'ble Supreme Court permitted the impleadment of the Respondent in Civil Appeal No. 8411/2019, no relief was granted to it in the final judgment. It has, therefore, been contended that any claims concerning the Respondent do not survive thereafter in any manner whatsoever.

XI. It has been contended that permitting the Respondent to pursue its counterclaims in arbitration would, in effect, amount to reopening and circumventing a Resolution Plan that has attained finality under Section 31 of the IBC, which is impermissible in law.

XII. Learned counsel has submitted that the learned Arbitral Tribunal has committed a manifest error in law while dealing with Issue No. 6, particularly in paragraph no. 177 of the Impugned Arbitral Award, where the Tribunal has held that the principle commonly referred to as the "clean slate theory" would not apply in the present case because the resolution process did not result in a change of management of the corporate debtor.

XIII. As averred by the Claimant, the reasoning adopted by the Tribunal is wholly unsustainable in law. It has been submitted that the operation of Section 31 of the IBC is not contingent

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upon any change in management of the corporate debtor. The statutory extinguishment of claims flows automatically upon approval of the resolution plan and is not dependent upon whether the resolution applicant is a third party or an existing promoter.

XIV. Learned counsel has further submitted that the binding effect of an approved resolution plan has been authoritatively explained by the Hon'ble Supreme Court in catena of judgements including in ***Ghanshyam Mishra & Sons Pvt. Ltd. v. Edelweiss Asset Reconstruction Co. Ltd.***[12], where the Apex Court held that once a resolution plan is approved under Section 31 of the IBC, all claims not forming part of the resolution plan stand extinguished and no proceedings can thereafter be initiated or continued in respect of such claims. Particular reliance has been placed upon paragraph nos. 65-71 and 102 of the said judgment, which read as under:

> "**65.** Bare reading of Section 31 of the I&B Code would also make it abundantly clear that once the resolution plan is approved by the adjudicating authority, after it is satisfied, that the resolution plan as approved by CoC meets the requirements as referred to in sub-section (2) of Section 30, it shall be binding on the corporate debtor and its employees, members, creditors, guarantors and other stakeholders. Such a provision is necessitated since one of the dominant purposes of the I&B Code is revival of the corporate debtor and to make it a running concern.
>
> **66.** The resolution plan submitted by the successful resolution applicant is required to contain various provisions viz. provision for payment of insolvency resolution process costs, provision for payment of debts of operational creditors, which shall not be less than the amount to be paid to such creditors in the event of liquidation of the corporate debtor under Section 53; or the

[12] 2021 SCC OnLine SC 313

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amount that would have been paid to such creditors, if the amount to be distributed under the resolution plan had been distributed in accordance with the order of priority in sub-section (1) of Section 53, whichever is higher. The resolution plan is also required to provide for the payment of debts of financial creditors, who do not vote in favour of the resolution plan, which also shall not be less than the amount to be paid to such creditors in accordance with sub-section (1) of Section 53 in the event of a liquidation of the corporate debtor. Explanation 1 to clause (*b*) of sub-section (2) of Section 30 of the I&B Code clarifies for the removal of doubts that a distribution in accordance with the provisions of the said clause shall be fair and equitable to such creditors. The resolution plan is also required to provide for the management of the affairs of the corporate debtor after approval of the resolution plan and also the implementation and supervision of the resolution plan. Clause (*e*) of sub-section (2) of Section 30 of the I&B Code also casts a duty on RP to examine that the resolution plan does not contravene any of the provisions of the law for the time being in force.

67. Perusal of Section 29 of the I&B Code read with Regulation 36 of the Regulations would reveal that it requires RP to prepare an information memorandum containing various details of the corporate debtor so that the resolution applicant submitting a plan is aware of the assets and liabilities of the corporate debtor, including the details about the creditors and the amounts claimed by them. It is also required to contain the details of guarantees that have been given in relation to the debts of the corporate debtor by other persons. The details with regard to all material litigation and an ongoing investigation or proceeding initiated by the Government and statutory authorities are also required to be contained in the information memorandum. So also the details regarding the number of workers and employees and liabilities of the corporate debtor towards them are required to be contained in the information memorandum.

68. All these details are required to be contained in the information memorandum so that the resolution applicant is aware as to what are the liabilities that he may have to face and provide for a plan, which apart from satisfying a part of such liabilities would also ensure, that the corporate debtor is revived and made a running establishment. The legislative intent of making the resolution plan binding on all the stakeholders after it gets the seal of approval from the adjudicating authority upon its satisfaction, that the

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resolution plan approved by CoC meets the requirement as referred to in sub-section (2) of Section 30 is that after the approval of the resolution plan, no surprise claims should be flung on the successful resolution applicant. The dominant purpose is that he should start with fresh slate on the basis of the resolution plan approved.

69. This aspect has been aptly explained by this Court in ***Essar Steel (India) Ltd. (CoC)* v. *Satish Kumar Gupta*, (2020) 8 SCC 531: (SCC p. 616, para 107)**

> "*107.* For the same reason, the impugned NCLAT judgment in ***Standard Chartered Bank* v. *Satish Kumar Gupta*, 2019 SCC OnLine NCLAT 388,** in holding that claims that may exist apart from those decided on merits by the resolution professional and by the adjudicating authority/Appellate Tribunal can now be decided by an appropriate forum in terms of Section 60(6) of the Code, also militates against the rationale of Section 31 of the Code. A successful resolution applicant cannot suddenly be faced with "undecided" claims after the resolution plan submitted by him has been accepted as this would amount to a hydra head popping up which would throw into uncertainty amounts payable by a prospective resolution applicant who would successfully take over the business of the corporate debtor. All claims must be submitted to and decided by the resolution professional so that a prospective resolution applicant knows exactly what has to be paid in order that it may then take over and run the business of the corporate debtor. This the successful resolution applicant does on a fresh slate, as has been pointed out by us hereinabove. For these reasons, NCLAT judgment **[*Standard Chartered Bank* v. *Satish Kumar Gupta*, 2019 SCC OnLine NCLAT 388]** must also be set aside on this count."

70. In view of this legal position, we could have very well stopped here and held that the observation made by NCLAT in the appeal filed by EARC to the effect that EARC was entitled to take recourse to such remedies as are available to it in law, is impermissible in law.

71. As held by this Court in ***CIT* v. *Monnet Ispat & Energy Ltd.*, (2018) 18 SCC 786**, in view of the provisions of Section 238 of the I&B Code, the provisions thereof will have an overriding effect, if there is any inconsistency with any of the provisions of the law for the time being in force or any instrument having effect by virtue of any such law.

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As such, the observations made by NCLAT to the aforesaid effect, if permitted to remain, would frustrate the very purpose for which the I&B Code is enacted.

*****

Conclusion

102. In the result, we answer the questions framed by us as under:

102.1. That once a resolution plan is duly approved by the adjudicating authority under sub-section (1) of Section 31, the claims as provided in the resolution plan shall stand frozen and will be binding on the corporate debtor and its employees, members, creditors, including the Central Government, any State Government or any local authority, guarantors and other stakeholders. On the date of approval of resolution plan by the adjudicating authority, all such claims, which are not a part of resolution plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim, which is not part of the resolution plan.

102.2. The 2019 Amendment to Section 31 of the I&B Code is clarificatory and declaratory in nature and therefore will be effective from the date on which the I&B Code has come into effect.

102.3. Consequently all the dues including the statutory dues owed to the Central Government, any State Government or any local authority, if not part of the resolution plan, shall stand extinguished and no proceedings in respect of such dues for the period prior to the date on which the adjudicating authority grants its approval under Section 31 could be continued."

XV. Further reliance has been placed upon the judgment of the Hon'ble Supreme Court in ***Electrosteel Steel Ltd. v. Ispat Carrier Pvt. Ltd.***[13], where the Apex Court reiterated that after the approval of a resolution plan, claims of creditors which were not recognized under the plan cannot be revived through separate proceedings.

XVI. Learned counsel has further submitted that the Hon'ble Supreme Court in the said judgement has unequivocally held

[13] (2025) 7 SCC 773

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that permitting such claims to be pursued subsequently would defeat the very object of the IBC. Particular reliance has been placed upon paragraph nos. 71-74 of the said judgment, which read as under:

> "**71.** Insofar as the second and third issues are concerned, it is by now well settled that once a resolution plan is duly approved by the adjudicating authority under sub-section (1) of Section 31, all claims which are not part of the resolution plan shall stand extinguished and no person will be entitled to initiate or continue any proceeding in respect to a claim which is not part of the resolution plan. In fact, this Court in ***Essar Steel (India) Ltd. (CoC)* v. *Satish Kumar Gupta*, (2020) 8 SCC 531,** had categorically declared that a successful resolution applicant cannot be faced with undecided claims after the resolution plan is accepted. Otherwise, this would amount to a hydra head popping up which would throw into uncertainty the amount payable by the resolution applicant. Insofar as the resolution plan is concerned, the resolution professional, the Committee of Creditors and the adjudicating authority noted about the claim lodged by the respondent in the arbitration proceeding. However, the respondent was not included in the top 30 operational creditors whose claims were settled at nil. This can only mean that the three authorities conducting the corporate insolvency resolution process did not deem it appropriate to include the respondent in the top 30 operational creditors. If the claims of the top 30 operational creditors were settled at nil, it goes without saying that the claim of the respondent could not be placed higher than the said top 30 operational creditors. Moreover, the resolution plan itself provides that all claims covered by any suit, cause of action, arbitration, etc. shall be settled at nil. Therefore, it is crystal clear that insofar as claim of the respondent is concerned, the same would be treated as nil on a par with the claims of the top 30 operational creditors.
>
> **72.** Lifting of the moratorium does not mean that the claim of the respondent would stand revived notwithstanding approval of the resolution plan by the adjudicating authority. Moratorium is intended to ensure that no further demands are raised or adjudicated upon during the corporate insolvency resolution process so that the process can be proceeded with and concluded without further complications. View taken by the High Court cannot be

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accepted in the light of the clear cut provisions of the IBC as well as the law laid down by this Court. In view of the resolution plan, as approved, the claim of the respondent stood extinguished. Therefore, the Facilitation Council did not have the jurisdiction to arbitrate on the said claim. Since the award was passed without jurisdiction, the same could be assailed in a proceeding under Section 47CPC. View taken by the High Court that because the appellant did not challenge the award under Section 34 of the 1996 Act, therefore, it was precluded from objecting to execution of the award at the stage of Section 47CPC, is wholly unsustainable.

73. Consequently, the view taken by the High Court that notwithstanding approval of the resolution plan by NCLT, the Facilitation Council did not lose jurisdiction to proceed and pronounce the arbitral award, is erroneous and contrary to the law laid down by this Court.

74. In that view of the matter, we have no hesitation to hold that upon approval of the resolution plan by NCLT, the claim of the respondent being outside the purview of the resolution plan stood extinguished. Therefore, the award dated 6-7-2018 is incapable of being executed. Consequently, the order dated 3-3-2023 passed by the Presiding Officer, Commercial Court/District Judge 1, Bokaro in Commercial Execution Case No. 21 of 2022 (Execution Case No. 77 of 2018) is hereby set aside. Execution proceedings in Commercial Execution Case No. 21 of 2022 (Execution Case No. 77 of 2018) pending in the Court of Presiding Officer, Commercial Court/District Judge 1, Bokaro, are hereby quashed. Resultantly, the impugned order of the High Court dated 17-7-2023 [***Electrosteel Steel Ltd.* v. *Ispat Carriers (P) Ltd.*, (2025) 256 Comp Cas 305**] is also set aside."

XVII. Learned counsel for the Claimant has further contended that the aforesaid principle has also been affirmed by this Court in ***JSW Ispat Special Products Ltd. v. Bharat Petroresources Ltd.***[14]. This Court, upon considering the judgments of the Supreme Court including ***Ghanshyam Mishra*** *(supra)* and ***Electrosteel*** *(supra)*, has held that once a Resolution Plan is approved under Section 31 of the IBC, all claims which are not forming part of

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the approved Resolution Plan stand extinguished, and no person can initiate or continue proceedings in respect of such claims in any manner whatsoever.

XVIII. Learned counsel has submitted that if the reasoning adopted by the learned Arbitral Tribunal is accepted, it would lead to a situation where creditors whose claims were not included in the resolution plan could reassert their claims repeatedly in independent proceedings, including arbitration, thereby reopening the entire insolvency resolution process. Such an interpretation would defeat the objective of the IBC and render the resolution process redundant.

XIX. It has thus been contended that the learned Tribunal had no jurisdiction to entertain the Respondent's counterclaims once the resolution plan had attained finality under Section 31 of the IBC. The finding recorded under Issue No.6 is thus contrary to the statutory mandate and suffers from patent illegality.

XX. Learned counsel has further submitted that once the finding on Issue No. 6 is found to be unsustainable in law, the consequential relief granted under Issue Nos. 5 and 7 concerning the counterclaims filed by the Respondent necessarily falls.

CONTENTIONS ON BEHALF OF THE RESPONDENT/ PRADEEP COLONISERS:

16. ***Per contra***, on behalf of the Respondent, the submissions advanced may be summarised as follows:

I. The Respondent has assailed the Impugned Arbitral Award to a limited extent. At the same time, the Respondent supports the

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finding of the Tribunal on Issue No. 6, whereby the learned Tribunal held that the Respondent's counterclaims were maintainable notwithstanding the CIRP proceedings initiated and completed against the Claimant under the IBC.

II. It has been submitted that during the CIRP proceedings, the Respondent duly lodged its claims, which were examined by the IRP. Upon such examination, the claims were partially verified to the extent of Rs. 1,87,57,863/-, as reflected in the List of Creditors prepared by the IRP, wherein the Respondent was included as a creditor at Serial No. 440. Despite such recognition, the approved Resolution Plan did not make any provision for, or even record, the Respondent's claims. It has therefore been contended that this omission was not inadvertent, but rather the result of a deliberate attempt on the part of the successful resolution applicant, which, notably, was none other than the erstwhile management of the Claimant company itself.

III. Learned counsel for the Respondent has contended that the Claimant's attempt to invoke Section 31 of the IBC as a bar to the Respondent's counterclaims is misconceived.

IV. Learned counsel for the Respondent has submitted that the factual circumstances of the present case are materially distinct from the cases relied upon by the Claimant concerning the so-called "*clean slate theory*". In the present case, the resolution process did not involve the entry of an unrelated third-party as a successful resolution applicant, but rather a restructuring undertaken by the existing promoter and management of the corporate debtor itself. Consequently, the rationale underlying

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the clean slate doctrine, which seeks to protect a *bona fide* third-party resolution applicant from past liabilities, has no application to the facts of the present case.

V. Learned counsel for the Respondent has placed reliance upon the reasoning adopted by the learned Arbitral Tribunal in this regard.

VI. It has been submitted that the learned Tribunal has correctly distinguished the judgments cited by the Claimant, holding that the principle laid down in ***Ghanshyam Mishra*** *(supra)*, ***Electrosteel*** *(supra)*, and other similar authorities arises in circumstances where a third-party resolution applicant acquires control of the corporate debtor and is entitled to operate the company on a clean slate.

VII. To support its case, reliance has also been placed by the Respondent upon the Judgment of the Madras High Court in ***The National Sewing Thread Co Ltd v. The Superintending Engineer***[15], wherein the Court, while examining the contours of the Clean Slate Theory, held that the doctrine cannot be invoked mechanically in every insolvency situation. The Court in that judgement observed that where, after the completion of the resolution process, the same promoters or substantially the same management continues to control the corporate debtor, the clean slate principle cannot operate to extinguish the claims of creditors whose claims were not disclosed during the CIRP, particularly when the suspended Board had a duty to make a

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[15] W.P. No.29845 of 2022

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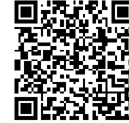

complete disclosure of all liabilities. The relevant portion of ***The National Sewing Thread*** *(supra)* reads as follows:

> "**49.2** In ascertaining how CST will apply vis-à-vis an undisclosed creditor is concerned, irrespective of whether the corporate debtor is a MSME or not, its suspended Board has an obligation to make a complete disclosure. See paragraph 36 above. This will now produce two consequences:
>
> a) If after a successful completion of a resolution process, the same promoters or substantially the same set of directors of the corporate debtor continue to be in the management, then CST will not apply to forfeit the rights of the undisclosed creditors when the suspended Board had an opportunity to disclose all its creditors during the resolution process. One who owes a duty to disclose cannot take advantage of one's own suppression of information.
>
> b) If after a successful resolution process, a third party-resolution applicant takes over the corporate debtor, then CST will apply to extinguish the rights of the undisclosed creditors but only against the successful resolution applicant or its successors-in-interest, and not against the promoters or the suspended board of directors of the corporate debtor. It should not be forgotten that CST is a judicial coinage to protect the third party-successful resolution-applicant from the uncertainties of future claims, and not invented to protect the fraud and suppression of the suspended board of the corporate debtor."

VIII. On this basis, the Respondent has asserted that since the present case does not involve a third-party resolution applicant taking over the corporate debtor, the Claimant cannot rely upon the clean slate doctrine to extinguish the Respondent's legitimate contractual claims arising from the work executed under the Work Order.

IX. It has been averred that in the present case, the corporate restructuring did not result in the entry of a new external entity assuming control of the corporate debtor. The Respondent,

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therefore, maintains that the principle of extinguishment of claims relied upon by the Claimant cannot be applied mechanically in the present factual matrix.

X. The Respondent has further submitted that the Claimant had, in fact, received payments from the Water Resources Department, Government of Bihar, in respect of the works executed by the Respondent under the project. The Respondent's counterclaim under Counter Claim No.1 merely seeks recovery of the amount legitimately due for the work performed under the Work Order.

XI. The Respondent has, therefore, asserted that the Claimant cannot rely upon the CIRP proceedings as a shield to avoid its contractual liabilities arising from the work executed by the Respondent. Permitting such an interpretation would enable the Claimant to unjustly retain payments received for the project while denying payment to the contractor who executed the work.

XII. The Respondent has relied upon the judgment of the Hon'ble Supreme Court in Civil Appeal No. 8411/2019, wherein the Court, despite observing that the resolution applicant suffered from ineligibility under Section 29A of the IBC, declined to disturb the approved Resolution Plan, having regard to the peculiar facts of the case. The Hon'ble Supreme Court took note that the Resolution Plan had already been approved by the requisite majority of the Committee of Creditors, had been implemented since 18.04.2018, substantial funds had been infused into the corporate debtor, and the company had resumed operations as a going concern with several ongoing projects of

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public importance, impacting thousands of shareholders and employees. Emphasising that the primary objective of the IBC is to revive the corporate debtor and restore it as a functional entity, the Court declined to unsettle the Resolution Plan.

XIII. On the strength of the aforesaid decision, the Respondent has asserted that the CIRP proceedings cannot be invoked by the Claimant as a shield to defeat legitimate contractual claims arising from work admittedly executed by the Respondent, particularly when the corporate debtor continues to operate as a going concern and has benefited from the works carried out under the contract. The relevant portions of the Judgment in Civil Appeal No. 8411/2019 read as follows:

> "**58.** Having discussed Section 29-A(*h*) of the Code as we understood, we shall now go into the facts of the instant case.
> **59.** Admittedly, Respondent 3 has executed personal guarantees which were invoked by three of the financial creditors even prior to the application filed. The rigour of Section 29-A(*h*) of the Code obviously gets attracted. The eligibility can never be restricted to the aforesaid three creditors, but also to other financial creditors in view of the import of Section 7 of the Code. In the case at hand, in pursuance to the invocation, an application invoking Section 7 indeed was filed by one such creditor. It was invoked even at the time of submitting a resolution plan by Respondent 3. Thus, in the touchstone of our interpretation of Section 29-A(*h*), we hold that the plan submitted by Respondent 3 ought not to have been entertained.
> **60.** The adjudicating authority and the Appellate Tribunal were not right in rejecting the contentions of the appellant on the ground that the earlier appeals having been withdrawn without liberty, the issue qua eligibility cannot be raised for the second time. Admittedly, the appellant was not a party to the decision of the adjudicating authority on the first occasion, in the appeal the appellant merely filed an application for impleadment. The appellate authority did not decide the matter on merit. In fact, the question of law is left open. The principle governing *res judicata* and *issue*

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> *estoppel* would never get attracted in such a scenario. Thus, the reasoning rendered by the Appellate Tribunal to that extent cannot be sustained in law.
>
> *****
>
> **65.** We remind ourselves of the ultimate object of the Code, which is to put the corporate debtor back on the rails. Incidentally, we also note that no prejudice would be caused to the dissenting creditors as their interests would otherwise be secured by the resolution plan itself, which permits them to get back the liquidation value of their respective credit limits. Thus, on the peculiar facts of the present case, we do not wish to disturb the resolution plan leading to the on-going operation of Respondent 1."

XIV. According to the Respondent, the arbitral proceedings merely concerned the adjudication of contractual disputes arising out of the Work Order between the parties and did not in any manner seek to reopen the CIRP proceedings or challenge the validity of the approved resolution plan.

XV. Reliance has also been placed upon the Judgment of the Hon'ble Supreme Court in ***STO v. Rainbow Papers Ltd.***[16], wherein the Apex Court held that the approval of a Resolution Plan under Section 31 of the IBC is contingent upon strict compliance with the requirements stipulated under Section 30(2) of the IBC.

XVI. The Respondent has submitted that, in the said judgment, it was observed that the learned Adjudicating Authority/NCLT acts as a statutory check to ensure that the Resolution Plan conforms to the mandatory provisions of the IBC before granting approval, and once approved, such a plan becomes binding on all stakeholders only if it satisfies those statutory requirements.

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[16] (2023) 9 SCC 545

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XVII. The Respondent has further contended that the decision of ***Rainbow Papers*** *(supra)* clarifies that the binding effect contemplated under Section 31 of the IBC is not absolute and cannot operate in disregard of statutory or legitimate claims which were not duly considered within the resolution framework. For this purpose, the learned Counsel for the Respondent has relied upon the following observation made in the said judgment:

> "**48.** A resolution plan which does not meet the requirements of sub-section (2) of Section 30 IBC, would be invalid and not binding on the Central Government, any State Government, any statutory or other authority, any financial creditor, or other creditor to whom a debt in respect of dues *arising under any law for the time being in force is owed*. Such a resolution plan would not bind the State when there are outstanding statutory dues of a corporate debtor."

XVIII. It has further been submitted that the Respondent had duly asserted its claims during the CIRP proceedings before the IRP, and the same were reflected in the list of creditors. It has further been contended that the Respondent was recognised as a creditor in the proceedings before the Hon'ble Supreme Court as well, wherein the impleadment application filed by the Respondent was allowed in Civil Appeal No. 8411/2019.

XIX. Learned Counsel for the Respondent has accordingly contended that the learned Arbitral Tribunal correctly held, while deciding Issue No.6, that the Respondent's counterclaims were maintainable and proceeded to adjudicate them on the merits.

XX. It has thus been submitted that the challenge raised by the Claimant in O.M.P.(COMM) 469/2025 is devoid of merit, and

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that the finding of the learned Arbitral Tribunal regarding the maintainability of the Respondent's counterclaims deserves to be upheld. At the same time, the Respondent has sought limited interference with the Impugned Award in O.M.P.(COMM) 470/2025. The Respondent has also sought enforcement of the Impugned Award by way of the accompanying execution petition.

ANALYSIS:

17. This Court has heard the learned counsel appearing for the parties at length and, with their able assistance, has carefully perused the Impugned Arbitral Award and the other material placed on record.

18. At the outset, it is apposite to note that this Court remains conscious of the limited scope of its jurisdiction while examining an objection petition under Section 34 of the A&C Act. There is a consistent and evolving line of precedents whereby the Hon'ble Supreme Court has authoritatively delineated and settled the contours of judicial intervention in such proceedings.

19. In this regard, a three-Judge Bench of the Hon'ble Supreme Court, after an exhaustive consideration of a catena of earlier judgments, in ***OPG Power Generation (P) Ltd. v. Enexio Power Cooling Solutions (India) (P) Ltd.***[17], while dealing with the grounds of conflict with the public policy of India and patent illegality, grounds which have also been urged in the present petitions, made certain pertinent observations, which are reproduced hereunder:

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[17] (2025) 2 SCC 417

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"Relevant legal principles governing a challenge to an arbitral award

30. Before we delve into the issue/sub-issues culled out above, it would be useful to have a look at the relevant legal principles governing a challenge to an arbitral award. Recourse to a court against an arbitral award may be made through an application for setting aside such award in accordance with sub-sections (2), (2-A) and (3) of Section 34 of the 1996 Act. Sub-section (2) of Section 34 has two clauses, (*a*) and (*b*). Clause (*a*) has five sub-clauses which are not relevant to the issues raised before us. Insofar as clause (*b*) is concerned, it has two sub-clauses, namely, (*i*) and (*ii*). Sub-clause (*i*) of clause (*b*) is not relevant to the controversy in hand. Sub-clause (*ii*) of clause (*b*) provides that if the Court finds that the arbitral award is in conflict with the public policy of India, it may set aside the award.

Public policy

31. "Public policy" is a concept not statutorily defined, though it has been used in statutes, rules, notification, etc. since long, and is also a part of common law. Section 23 of the Contract Act, 1872 uses the expression by stating that the consideration or object of an agreement is lawful, unless, inter alia, opposed to public policy. That is, a contract which is opposed to public policy is void.

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37. What is clear from above is that for an award to be against public policy of India a mere infraction of the municipal laws of India is not enough. There must be, inter alia, infraction of fundamental policy of Indian law including a law meant to serve public interest or public good.

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The 2015 Amendment in Sections 34 and 48

42. The aforementioned judicial pronouncements were all prior to the 2015 Amendment. Notably, prior to the 2015 Amendment the expression "in contravention with the fundamental policy of Indian law" was not used by the legislature in either Section 34(2)(*b*)(*ii*) or Section 48(2)(*b*). The pre-amended Section 34(2)(*b*)(*ii*) and its Explanation read:

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44. By the 2015 Amendment, in place of the old Explanation to Section 34(2)(*b*)(*ii*), *Explanations 1 and 2* were added to remove any doubt as to when an arbitral award is in conflict with the public policy of India.

45. At this stage, it would be pertinent to note that we are dealing with a case where the application under Section 34 of the 1996 Act was filed after the 2015 Amendment, therefore the newly substituted/added Explanations would apply [***Ssangyong Engg. & Construction Co. Ltd.* v. *NHAI*, (2019) 15 SCC 131**].

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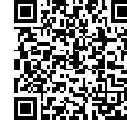

46. The 2015 Amendment adds two Explanations to each of the two sections, namely, Section 34(2)(*b*)(*ii*) and Section 48(2)(*b*), in place of the earlier Explanation. The significance of the newly inserted *Explanation 1* in both the sections is two-fold. First, it does away with the use of words : (*a*) "*without prejudice to the generality of sub-clause (ii)*" in the opening part of the pre-amended Explanation to Section 34(2)(b)(ii); and (b) "*without prejudice to the generality of clause (b) of this section*" in the opening part of the pre-amended Explanation to Section 48(2)(*b*); secondly, it limits the expanse of public policy of India to the three specified categories by using the words "*only if*". Whereas, *Explanation 2* lays down the standard for adjudging whether there is a contravention with the fundamental policy of Indian law by providing that a review on merits of the dispute shall not be done. This limits the scope of the enquiry on an application under either Section 34(2)(*b*)(*ii*) or Section 48(2)(*b*) of the 1996 Act.

47. The 2015 Amendment by inserting sub-section (2-A) in Section 34, carves out an additional ground for annulment of an arbitral award arising out of arbitrations other than international commercial arbitrations. Sub-section (2-A) provides that the Court may also set aside an award if that is vitiated by patent illegality appearing on the face of the award. This power of the Court is, however, circumscribed by the proviso, which states that an award shall not be set aside merely on the ground of an erroneous application of the law or by reappreciation of evidence.

48. *Explanation 1* to Section 34(2)(*b*)(*ii*), specifies that an arbitral award is in conflict with the public policy of India, *only if*:

(*i*) the making of the award was induced or affected by fraud or corruption or was in violation of Section 75 or Section 81; or

(*ii*) it is in contravention with the fundamental policy of Indian law; or

(*iii*) it is in conflict with the most basic notions of morality or justice.

49. In the instant case, there is no allegation that the making of the award was induced or affected by fraud or corruption, or was in violation of Section 75 or Section 81. Therefore, we shall confine our exercise in assessing as to whether the arbitral award is in contravention with the fundamental policy of Indian law, and/or whether it conflicts with the most basic notions of morality or justice. Additionally, in the light of the provisions of sub-section (2-A) of Section 34, we shall examine whether there is any patent illegality on the face of the award.

50. Before undertaking the aforesaid exercise, it would be apposite to consider as to how the expressions:

(*a*) "in contravention with the fundamental policy of Indian law";

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(*b*) "in conflict with the most basic notions of morality or justice"; and

(*c*) "patent illegality" have been construed.

In contravention with the fundamental policy of Indian law

51. As discussed above, till the 2015 Amendment the expression "in contravention with the fundamental policy of Indian law" was not found in the 1996 Act. Yet, in ***Renusagar Power Co. Ltd.*** **v.** ***General Electric Co.*****, 1994 Supp (1) SCC 644**, in the context of enforcement of a foreign award, while construing the phrase "contrary to the public policy", this Court held that for a foreign award to be contrary to public policy mere contravention of law would not be enough rather it should be contrary to:

(*a*) the fundamental policy of Indian law; and/or

(*b*) the interest of India; and/or

(*c*) justice or morality.

*****

55. The legal position which emerges from the aforesaid discussion is that after "the 2015 Amendments" in Section 34(2)(*b*)(*ii*) and Section 48(2)(*b*) of the 1996 Act, the phrase "in conflict with the public policy of India" must be accorded a restricted meaning in terms of *Explanation 1*. The expression "in contravention with the fundamental policy of Indian law" by use of the word "fundamental" before the phrase "policy of Indian law" makes the expression narrower in its application than the phrase "in contravention with the policy of Indian law", which means mere contravention of law is not enough to make an award vulnerable. To bring the contravention within the fold of fundamental policy of Indian law, the award must contravene all or any of such fundamental principles that provide a basis for administration of justice and enforcement of law in this country.

56. Without intending to exhaustively enumerate instances of such contravention, by way of illustration, it could be said that:

(*a*) violation of the principles of natural justice;

(*b*) disregarding orders of superior courts in India or the binding effect of the judgment of a superior court; and

(*c*) violating law of India linked to public good or public interest, are considered contravention of the fundamental policy of Indian law.

However, while assessing whether there has been a contravention of the fundamental policy of Indian law, the extent of judicial scrutiny must not exceed the limit as set out in *Explanation 2* to Section 34(2)(*b*)(*ii*).

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Patent illegality

65. Sub-section (2-A) of Section 34 of the 1996 Act, which was inserted by the 2015 Amendment, provides that an arbitral award not arising out of international commercial arbitrations, may also

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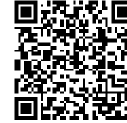

be set aside by the Court, if the Court finds that the award is visited by patent illegality appearing on the face of the award. The proviso to sub-section (2-A) states that an award shall not be set aside merely on the ground of an erroneous application of the law or by reappreciation of evidence.

66. In ***ONGC Ltd.* v. *Saw Pipes Ltd.*, (2003) 5 SCC 705**, while dealing with the phrase "public policy of India" as used in Section 34, this Court took the view that the concept of public policy connotes some matter which concerns public good and public interest. If the award, on the face of it, patently violates statutory provisions, it cannot be said to be in public interest. Thus, an award could also be set aside if it is patently illegal. It was, however, clarified that illegality must go to the root of the matter and if the illegality is of trivial nature, it cannot be held that award is against public policy.

67. In ***Associate Builders* v. *DDA*, (2015) 3 SCC 49**, this Court held that an award would be patently illegal, if it is contrary to:

(*a*) substantive provisions of law of India;

(*b*) provisions of the 1996 Act; and

(*c*) terms of the contract [See also three-Judge Bench decision of this Court in ***State of Chhattisgarh* v. *SAL Udyog (P) Ltd.*, (2022) 2 SCC 275**].

The Court clarified that if an award is contrary to the substantive provisions of law of India, in effect, it is in contravention of Section 28(1)(*a*) of the 1996 Act. Similarly, violating terms of the contract, in effect, is in contravention of Section 28(3) of the 1996 Act.

68. In ***Ssangyong Engg. & Construction Co. Ltd.* v. *NHAI*, (2019) 15 SCC 131** this Court specifically dealt with the 2015 Amendment which inserted sub-section (2-A) in Section 34 of the 1996 Act. It was held that "patent illegality appearing on the face of the award" refers to such illegality as goes to the root of matter, but which does not amount to mere erroneous application of law. It was also clarified that what is not subsumed within "the fundamental policy of Indian law", namely, the contravention of a statute not linked to "public policy" or "public interest", cannot be brought in by the backdoor when it comes to setting aside an award on the ground of patent illegality [See ***Ssangyong Engg. & Construction Co. Ltd.* v. *NHAI*, (2019) 15 SCC 131**]. Further, it was observed, reappreciation of evidence is not permissible under this category of challenge to an arbitral award [See ***Ssangyong Engg. & Construction Co. Ltd.* v. *NHAI*, (2019) 15 SCC 131**].

Perversity as a ground of challenge

69. Perversity as a ground for setting aside an arbitral award was recognised in ***ONGC Ltd.* v. *Western Geco International Ltd.*, (2014) 9 SCC 263**. Therein it was observed that an arbitral decision must not be perverse or so irrational that no reasonable

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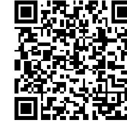

person would have arrived at the same. It was observed that if an award is perverse, it would be against the public policy of India.

70. In ***Associate Builders* v. *DDA*, (2015) 3 SCC 49** certain tests were laid down to determine whether a decision of an Arbitral Tribunal could be considered perverse. In this context, it was observed that where:

(*i*) a finding is based on no evidence; or

(*ii*) an Arbitral Tribunal takes into account something irrelevant to the decision which it arrives at; or

(*iii*) ignores vital evidence in arriving at its decision, such decision would necessarily be perverse.

However, by way of a note of caution, it was observed that when a court applies these tests it does not act as a court of appeal and, consequently, errors of fact cannot be corrected. Though, a possible view by the arbitrator on facts has necessarily to pass muster as the arbitrator is the ultimate master of the quantity and quality of evidence to be relied upon. It was also observed that an award based on little evidence or on evidence which does not measure up in quality to a trained legal mind would not be held to be invalid on that score.

71. In ***Ssangyong Engg. & Construction Co. Ltd.* v. *NHAI*, (2019) 15 SCC 131**, which dealt with the legal position post the 2015 Amendment in Section 34 of the 1996 Act, it was observed that a decision which is perverse, while no longer being a ground for challenge under "public policy of India", would certainly amount to a patent illegality appearing on the face of the award. It was pointed out that an award based on no evidence, or which ignores vital evidence, would be perverse and thus patently illegal. It was also observed that a finding based on documents taken behind the back of the parties by the arbitrator would also qualify as a decision based on no evidence inasmuch as such decision is not based on evidence led by the parties, and therefore, would also have to be characterised as perverse [See ***Ssangyong Engg. & Construction Co. Ltd.* v. *NHAI*, (2019) 15 SCC 131**].

72. The tests laid down in ***Associate Builders* v. *DDA*, (2015) 3 SCC 49** to determine perversity were followed in ***Ssangyong Engg. & Construction Co. Ltd.* v. *NHAI*, (2019) 15 SCC 131** and later approved by a three-Judge Bench of this Court in ***Patel Engg. Ltd.* v. *North Eastern Electric Power Corpn. Ltd.*, (2020) 7 SCC 167**.

73. In a recent three-Judge Bench decision of this Court in ***DMRC Ltd.* v. *Delhi Airport Metro Express (P) Ltd.*, (2024) 6 SCC 357**, the ground of patent illegality/perversity was delineated in the following terms: (SCC p. 376, para 39)

> "*39*. In essence, the ground of patent illegality is available for setting aside a domestic award, if the decision of the arbitrator is found to be perverse, or so irrational that no

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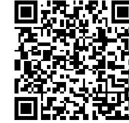

reasonable person would have arrived at it; or the construction of the contract is such that no fair or reasonable person would take; or, that the view of the arbitrator is not even a possible view. A finding based on no evidence at all or an award which ignores vital evidence in arriving at its decision would be perverse and liable to be set aside under the head of "patent illegality". An award without reasons would suffer from patent illegality. The arbitrator commits a patent illegality by deciding a matter not within its jurisdiction or violating a fundamental principle of natural justice."

Scope of interference with an arbitral award

74. The aforesaid judicial precedents make it clear that while exercising power under Section 34 of the 1996 Act the Court does not sit in appeal over the arbitral award. Interference with an arbitral award is only on limited grounds as set out in Section 34 of the 1996 Act. A possible view by the arbitrator on facts is to be respected as the arbitrator is the ultimate master of the quantity and quality of evidence to be relied upon. It is only when an arbitral award could be categorised as perverse, that on an error of fact an arbitral award may be set aside. Further, a mere erroneous application of the law or wrong appreciation of evidence by itself is not a ground to set aside an award as is clear from the provisions of sub-section (2-A) of Section 34 of the 1996 Act.

75. In ***Dyna Technologies (P) Ltd.* v. *Crompton Greaves Ltd.*, (2019) 20 SCC 1**, paras 27-43, a three-Judge Bench of this Court held that courts need to be cognizant of the fact that arbitral awards are not to be interfered with in a casual and cavalier manner, unless the court concludes that the perversity of the award goes to the root of the matter and there is no possibility of an alternative interpretation that may sustain the arbitral award. It was observed that jurisdiction under Section 34 cannot be equated with the normal appellate jurisdiction. Rather, the approach ought to be to respect the finality of the arbitral award as well as party's autonomy to get their dispute adjudicated by an alternative forum as provided under the law."

20. The principal issue that arises for consideration is whether the counterclaims preferred by the Respondent were maintainable in light of the CIRP undergone by the Claimant under the IBC. Consequently, the ancillary question that falls for determination is whether the Respondent was entitled to any relief in respect of such counterclaims.

21. In the aforesaid backdrop, and bearing in mind that the

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determination of Issue No. 6 before the learned Arbitral Tribunal constitutes the very substratum of the present controversy, it becomes apposite for this Court to advert to the findings recorded by the learned Arbitral Tribunal on this aspect. Accordingly, for the sake of completeness, it is necessary to reproduce the relevant findings on the said issue, which are as follows:

> "**Issue No. 6: Whether the Counter Claims of the Respondent-Counter Claimant are not maintainable as per the provisions of IBC Code 2016?**
>
> **162.** Corporate Insolvency Resolution Process against Claimant Company was initiated by the creditor RBL Bank Limited under the Insolvency and Bankruptcy Code, 2016, by an order of the Hon'ble National Company Law Tribunal Vide Order dated 30.03.2017 (**Ann. C-16, Pg.216-223, CV-11**). The Financial creditors of the Company, Mis RBL Bank Pvt. Ltd filed an application bearing No. (IB) -170/KB/2017 under Section 7 of the Insolvency and Bankruptcy Code 2016 before the Hon'ble National Company Law Appellate Tribunal, Kolkata Bench to initiate the Corporate Insolvency Resolution Process against the Claimant Company. The aforesaid application was admitted by the Hon'ble NCLT vide its order dated 30.03.2017, whereby the Hon'ble NCLT was pleased to impose moratorium upon the Claimant Company in terms of Section 14 of the Code and NCLT has appointed Mr. Atanu Mukerjee as the Interim Resolution Professional (IRP), to take over the control and management of the Claimant Company. On 30.03.2017 (**Ann.C-17, Pg.224, CV-II**), the IRP released public announcement in Form-A bearing Reference No. IBBI/IPAIP/ 00088/20 16-17 /1097 wherein the creditors of the Claimant Company were called upon to submit their claims against the Claimant Company. On behalf of the Claimant, it is contended that the counter claims of the Respondent are not maintainable as the Counter Claims not being part of approved Resolution Plan under IBC, 2016. Claimant contends that it is settled law that all claims not part of the Resolution Plan get extinguished on approval of the Resolution Plan by Adjudicating Authority under Section 31 of IBC, 2016.
>
> **163.** RW-1 stated that only after the public announcement released by IRP on 30.03.2017. Respondent had come to know about the initiation of CIRP against the Claimant Company and the Respondent filed its claim in Form-B (**Ex.RW-1/X5**) to the tune ofRs.7,29,59,412/before the IRP qua the outstanding dues and payments to be made by the Claimant. R W-1 stated that the amount of Rs.7,29,59,412/- claimed before the IRP comprised of

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amount claimed as per R.A. Bill No.12 Rs.6,52,59,317 /- qua the payments due in terms of 12th RA Bill and Rs.77,00,095 /- towards the security amount, Retention money, etc. withheld by the Claimant Company. The Respondent filed its claim in Form-Bon 14.04.2017 (**Ann. C-18, Pg.225-230, CV-II**) before the Resolution Professional making a claim to the tune of Rs.7,29,59,412/-. RW-1 stated that an email was sent by IRP/RP requesting to submit Respondent's claim against the Claimant Company. In response to the said email, Respondent Company filed its claim form before IRP (Q/A 52). Claim Form filed by the Respondent before the IRP has been shown to R W-1 during his cross examination and that said Claim Form along with Annexures thereon (BOQ Items of Work executed till 26.07.2016) was marked as **Ex. RW-1/ XS (Q/A 22, RW-1**). The claim filed by the Respondent before IRP was partially approved by the IRP to the tune of Rs.1 ,87, 57,863 / -. It is stated that a List of creditors (**Ex. RW-1/13, Pg.466-478, RV-III**) was prepared wherein the name of the Respondent was included at **Serial number 440 of the list of the creditors**. Annexure R-8 - Ex. RW-1/13 is the photocopy of the List of creditors published by IRP/RP containing the List creditors and also the List of creditors. As pointed out above, the name of the Respondent was mentioned at Serial No. 440 in the List of Creditors along with all the names of the creditors are mentioned. As per Ex. RW-1 /13 - Annexure R-8, it is stated that an amount of Rs.1, 87,57,863/- is payable by the Claimant company to the Respondent. As per the said list, an amount of Rs.1,87,57,863/- was stated as verified by the IRP out of the amount claimed for Rs.7,29,59,412/-. Resolution Plan dated 22.11.2017 submitted by Mr. Anjani Kumar Lakhotia was approved by the Committee of Creditors with 78.50% support and the same was approved by the NCL T vide its Order dated 18.04.2018 (**Ex. CW- 1/19, Pg. 231, CV-2**).

164. Some of the financial creditors filed appeal against the Order dated 18.04.2018 of the NCLT before National Company Law Appellate Tribunal (NCLAT). Vide its order dated 16.08.2019 (**Ann. C-20, Pg.257-269, CV-II**) the Hon'ble NCLAT upheld the Creditor' s approved Resolution Plan and dismissed all the appeals. Bank of Baroda one of the dissenting financial creditors of the Claimant Company challenged the order of the NCLAT dated 16.08.2019 before the Hon'ble Supreme Court vide Civil Appeal No. 8411 of 2019 titled Bank of Baroda Vs MBL Infrastructures Ltd. & Ors. The Hon'ble Supreme Court vide its interim order dated 25.11.2019 stayed the implementation and operation of the impugned judgment of NCLT dated 18.04.2018 and as a result of the stay, the implementation of Resolution Plan of Mr. Anjani Kumar Lakhotia got stayed. Before the Supreme Court, the Respondent has filed an Application for its impleadment as a party

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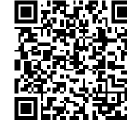

in IA No. 13 8207 /2021 in C.A. No. 8411/2019 stating that the Respondent is the Operational Creditor and the Respondent also has made to reject the Approved Resolution Plan dated 22.11.2017. In the said Application, the Appellant- Bank of Baroda stated that no objection for the impleadment of the Respondent. By the Order dated 26.10.2021, the Hon'ble Supreme Court has allowed the said Impleadment Application and the Respondent was thus recognised as an "Operational Creditor". The Hon'ble Supreme Court vide Judgment and order dated 18.01.2022 dismissed the Civil Appeal No. 8411 of 2019 inter alia making certain observations (**Annexure C-21**). The Interim Resolution Plan has been upheld by the Hon'ble Supreme Court.

165. The Interim Resolution Professional has made the Public announcement calling upon claims of the Creditors against the Claimant Company (**Ann. C-17, pg.224, CV-II**). The Respondent submitted the claim before the Insolvency Resolution Professional on 13.04.2017 -Annexure C-18, pg.225 of CV-11. According to the Respondent, the claim filed by the Respondent was partially approved by the IRP to the tune of Rs. 1,87,57,863/-. Pursuant to the submissions of the claims with the IRP a list of creditors was published by the IRP on the IBBI website, wherein the name of the Respondent is said to have been included at number 440 of the list o the creditors. As per the said List of Creditors (Ex. RW- 1/13, pg.466, RV-11), an amount ofRs.1,87,57,853/- was shown as verified by the IRP out of the Respondent's claim amount ofRs.7,29,59,412/-. The IRP subsequently published a List of Creditors, wherein the Respondent's name was included at Serial No. 440. As per the said list, as against the total claim amount of Rs.7,29,59,412/-, a partial amount of Rs.1,87,57,863/- was admitted by the IRP and the same is reflected in the List of creditors published by the IRP (**Ex. RW-1/13, pg. 466, RV-III**). Respondent states that despite the Final Resolution Plan being approved in 2018, the Respondent has not received any payment from the Claimant.

166. Per Contra, Claimant contends that the Insolvency Resolution Professional had not admitted any of the claim of the Respondent; Claimant states that advances of Rs.1,87,57,863/- were to be recovered from the Respondent and payable to the Claimant. Claimant contends that the IRP/RP had not admitted any claim of the Respondent despite the Respondent having filed claim for Rs.7,29,59,412/- before the IRP. Case of the Claimant is that the Insolvency Resolution Professional did not admit the claim of the Respondent and the Respondents claims were not included in the Resolution Plan. Claimant contends that the Approved Resolution Plan is binding on the Respondent and that in view of Section 238 of IBC, the IBC 2016 supersedes all other laws. On behalf of the Claimant, it was submitted that the Respondent's claim being not a

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part of the Resolution Plan, the Respondent is not entitled to the claim made by the Respondent. It was further submitted that as per the Resolution Plan, only admitted claims alone will be paid after reconciliation and subject to rights and remedies available. It is contended that the claims of Respondent being not part of the Resolution Plan and therefore Respondent is not entitled to any of the Counter Claims and the counter claims are barred under law and not maintainable.

Respondent's claim before IRP Professional/ RP:-

167. From the above discussion, it is seen that the Respondent/Counter-Claimant's claim was initially partially admitted by the IRP and reflected in the list of creditors - Serial No. 440 of Ex.RW-1/13. However, it was subsequently removed and not included in the Resolution Plan. According to the Respondent, the IRP having admitted the Respondent's claim in the creditor list and thereafter omitted to included it in the Resolution Plan is without any justification. It is to be pointed out that Mr. Lakhotia (CW-I - Promoter of the Claimant Company) himself submitted the Resolution Plan for the Claimant - MBL Infra and after discussion by the creditors, the same had been approved.

168. On behalf of the Respondent, it was submitted that since Mr. Lakhotia - Promoter of the Claimant Company himself was the one who submitted the Resolution Plan and "**unexplained exclusion of a previously admitted claim (Ex.RW-1/13)**" is a deliberate and mala fide suppression. Respondent alleges that such unexplained exclusion of a previously admitted claim reflects connivance between the IRP and Mr. Lakhotia. Mr. Lakhotia, Promoter of the Claimant Company himself submitted the Resolution Plan and after discussion the same had been approved by the Committee of Creditors and also by NCL T and NCLAT. So far as the contention of the Respondent alleging connivance between the IRP and Mr. Lakhotia, is concerned, this Tribunal does not propose to go into the allegation made by the Respondent, as Resolution Plan has been approved by the Committee of Creditors and also by NCLT and NCLAT. So far as the Appeal filed before the Hon'ble Supreme Court, though the Supreme Court has observed that Mr. Lakhotia was not eligible to submit the Resolution Plan. Hon'ble Supreme Court did not interfere with the Resolution Plan on the ground that the Resolution Plan has already been implemented.

169. On behalf of the Claimant, it was contended that the Respondents claims having been excluded from the Resolution Plan, the Respondent is barred from making a claim against the Claimant. The Claimant's contention that the Respondent's claim being not a part of the approved Resolution Plan and therefore, Respondent is not entitled to the claim amount does not merit acceptance. As discussed earlier, as against the judgment of NCLAT dated 16.08.2019 (**Exhibit CW-1/20, Pg. 257, CV-II)**

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Bank of Baroda preferred Civil Appeal before the Hon'ble Supreme Court of India in Civil Appeal No. 8411 of 2019. As discussed earlier, by its judgment dated 18.01.2022 the Supreme Court disposed of the Civil Appeal No.8411 of 2019. By a reading of the judgment of Supreme Court, it is seen that Supreme Court has held that the Resolution Plan submitted by Mr. Lakhotia was illegal, as it was barred under Section 29A(h) of the Insolvency and Bankruptcy Code, 2016. However, the Hon'ble Supreme Court did not interfere with the approved Resolution Plan on the ground that the Resolution Plan has already been implemented by all concerned. As rightly contended by the learned Counsel for the Respondent, the order passed by the Supreme Court approving the Resolution Plan is by invoking the power under Article 142 of the Constitution of India. The Claimant is therefore not right in contending that since the Resolution Plan met the requirement of the Code and in view of Section 31 (1) of IBC, 2016, the Respondent having been excluded from the Resolution Plan, the Respondent cannot fall back upon Ex.RW-1/13 as per which the claim of the Respondent was initially admitted by the IRP.

<u>Re: Claimant's contention that EX. RW-1/13 - List of Creditors is a forged and fabricated document</u>:-

170. The Claimant has denied the partial approval and verification of the Respondent's claims by the IRP/RP amounting to Rs.1,87,57,863/. Claimant contends that the said amount of Rs.1,87,57,863/- is not payable to the Respondent; but according to the Claimant, as per Exhibit CW-1/31 said amount is payable by the Respondent to the Claimant. As pointed out earlier, being aggrieved by the exclusion from the Final Resolution Plan by the IRP, the Respondent filed IA No. 138207/2021 in Civil Appeal No. 8411/2019 before the Hon'ble Supreme Court, seeking its Impleadment as an Operational Creditor of the Claimant. In the CA No. 8411/2019, filed by the Bank of Baroda, vide Order dated 26.10.2021, the Hon'ble Supreme Court allowed the Impleading Application filed by the Respondent and the Respondent was thus recognised as an Operational Creditor. There is no merit in the Claimant's contention that the List of Creditors - Ex. RW-1/13 is forged and fabricated. It is to be pointed out that while filing the Impleadment Application, the List of Creditors was submitted by the Respondent before the Hon 'hie Supreme Court in 2021. If the List of Creditors - Ex. RW-1/13 is a fabricated document as now alleged by the Claimant, the Claimant could have very well filed the List of Creditors prepared by the IRP before the Supreme Court to falsify Ex. RW-1/13. But the Claimant has not filed any other document to substantiate its contention that Ex. RW-1/13 is forged and fabricated. Considering the entries in Ex. RW-1/13, and the minute details thereon, the Tribunal holds that Ex. RW-1/13 is genuine document and containing the actual List of Creditors.

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171. RW-1 stated that he got Ex. RW-1/13 - Annexure R-8 (**Pg.466-478, RV-III**) when he visited the office of the Claimant company, and that he got Annexure R-8 from the staff of the Claimant company **(Q/A 56, RW-1)**. It was suggested to RW-1 by the Claimant that neither the Claimant nor the IRP/RP of the Claimant Company had ever handed over the alleged Ex. RW-1/13 - Annexure R-8 as no such document ever existed. (Q/A 58, RW-1). There is no merit in the suggestion made by the Claimant that **Annexure R-8 - Ex. RW-1/13** is a fabricated document and the same does not merit acceptance. **Annexure R-8** contains all the minute details of all the creditors numbering 722 and the "amount claimed by the creditors" and amount verified from books and the names of the creditors have been arranged in an alphabetical manner. SI. No. 440 contains the name of the Respondent "Pradeep Colonisers and Suppliers Pvt. Ltd.". The amount claimed by the Respondent before IRP/RP is stated as Rs.7,29,59,412/- and upon verification of the Book of Accounts, amount verified from the Claimant's books is stated as Rs.1,87,57,863/-. As discussed earlier, the IRP verified from the available Books of Account and found that an amount of Rs.1,87,57,863/as the amount payable to the Respondent.

172. As pointed out above, in **Annexure R-8 - Ex. RW-1/13**, the name of the Respondent is included at Serial No. 440 in the list and as per the list, an amount ofRs.1,87,57,863/- is due and payable to the Respondent and the same has been verified by the IRP. Per contra, while referring to the claim submitted by the Respondent before the IRP, Claimant contends that the IRP had not admitted any amount claimed by the Respondent. Claimant in the reply filed by the Claimant to the Statement to the Counter claims the Claimant has stated that "*advances of Rs.1,87,57,863/- were to be recovered from the Respondent/ Counter Claimant*". The contention of the Claimant that the IRP had not admitted any amount of the claim submitted by the Respondent is not in accordance with the documents placed on record.

173. The Contention of the Claimant that an amount of Rs.1,87,57,863/- was recoverable by the Claimant company from the Respondent is not in accordance with the Headings given by the IRP in Ex. RW-1/13 **(Pg. 466-478, RV-III)**. In Ex. RW-1/13 - List of Creditors, IRP has prepared the List with the Headings: - *"Sl. No", "Name", "Amount claimed" and "Amount verified from the Bank"*; that is the amount claimed by the Creditors from the Debtor. In the Insolvency Proceedings under the Insolvency and Bankruptcy Code, list is prepared containing the List of Creditors and the amount claimed by the Creditors from the Insolvent Debtor and the said list is prepared before convening the Meeting of Creditors. While so, the Claimant is not right in contending that the amount of Rs.1,87,57,863/- as stated in SL No. 440 at pg.473 of

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RV-III is the amount payable by the Respondent to the Claimant. The Claimant has not submitted any documents to substantiate its contention that the said MOUNT of Rs.1,87,57,863/- was actually payable by the Respondent to the Claimant. As held earlier in Claim No.7, the contention of the Claimant that an amount of Rs.1,87,57,863/is payable by the Respondent to the Claimant is bereft of merits and the Claimant's claim under Claim No.7 has been rejected.

174. As pointed out earlier, the Respondent has filed IA No. 138207/2021 in Civil Appeal No. 8411/2019 before the Hon'ble Supreme Court, seeking Impleadment as an Operational Creditor of the Claimant and the said Application was allowed by the Supreme Court and the Respondent has been recognised as the creditor. The Respondent's case is based upon the Respondent's RA Bills, in particular RA Bill No.12 and also based on the fact that the Respondent's name is appearing in the List of Creditors (Ex. RW-1/13, Pg. 466-478, RVIII). Upon verification of the Accounts of the Claimant, it was found by the IRP that an amount ofRs.1,87,57,863/- is payable to the Respondent. Contention of the Claimant in the said Civil Appeal before the Supreme Court in C.A. No. 8411/2019, Bank of Baroda was the Appellant and Bank of Baroda did not have any objection to the impleadment of the Applicant - Pradeep Colonisers & Suppliers Pvt. Ltd. Claimant contends that the Claimant who was the Respondent in the said appeal before the Supreme Court was not issued any Notice in the Impleading Application. Though the Bank of Baroda - Appellant thereon has stated "no objection" for the impleadment of the Respondent as an Operational Creditor, the Claimant could have very well raised objection for the impleadment of the Respondent before the Hon'ble Supreme Court. But the Claimant did not raise any objection to the Respondent's impleadment and recognising the Respondent as an Operational Creditor. The Hon'ble Supreme Court has allowed the IA No. 138207/2021 filed by the Respondent. From the Order of the Hon'ble Supreme Court dated 26.10.2021 in the IA No. 138207/2021, it is seen that: - (i) the Respondent's name was reflected in the List of Creditors; (ii) the Claimant who was a party in the Appeal filed before the Supreme Court has not raised any objection for allowing the Respondent's impleadment Application; and that (iii) the Respondent was impleaded as an Operational Creditor.

175. Re - Contention that the Respondent is not the part of the Interim Resolution Plan and therefore the Counter Claims made by the Respondent are not maintainable: - Case of the Claimant is that the IRP/RP had not admitted any claim of the Respondent despite the Respondent having filed claim before the IRP/RP. As pointed out earlier, the CIRP Proceedings of the Claimant Company was initiated on 30.03.2017 and Mr. Atanu

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Mukherjee was appointed as an Interim Resolution Professional. The Respondent submitted Form-B before the IRP on 14.04.2017 claiming a sum of Rs.7,29,59,412/-, the amount claimed as per RA Bill No. 12 for the works executed till 20.11.2016. By the Order dated 18.05.2017, Hon'ble NCLT, Kolkata appointed Mr. Sanjeev Ahuja as Resolution Professional replacing the IRP, Mr. Atanu Mukherjee. As per the Provisions of the IBC, 2016, Mr. Sanjeev Ahuja has taken over the management of the Claimant Company. According to the Respondent, the IRP has partially approved the Respondent's claim for Rs.1 ,87,57,862/-; but the name of the Respondent was omitted in the Resolution Plan submitted before the NCL T, Kolkata. Claimant contends that the Claims submitted by the Respondent was not approved by the IRP. The Resolution Plan dated 22.11.2017 submitted by Mr. Anjani Kumar Lakhotia was approved by the NCLT by its Order dated 18.04.2018; the claim of the Respondent was not a part of the said Resolution Plan approved by NCLT. Case of the Claimant is that the since the Respondent was not a part of the Resolution plan, the claims raised by the Respondent are extinguished in terms of Section 31 (1) of IBC. As per Section 31 (1) of the IBC, 2016, the Resolution Plan approved by the Adjudicating Authority shall be binding on all concerned parties.

176. Claimant contends that it is a settled law that all those claims which are not part of the Resolution Plan stands extinguished on approval of Resolution plan by Adjudicating Authority under Section 31 of IBC, 2016. In this regard Claimant has relied upon the Judgment of the Supreme Court in **Ghanshyam Mishra and Sons Private Limited Vs Edelweiss Asset Reconstruction Company Limited, "2021 SCC Online SC 313"**. Relevant portion of the said judgment reads as under: -

> *"2. The important questions which arose for consideration were as under: -*
> *(i) As to whether any creditor including the Central Government, State Government or any local authority is bound by the Resolution Plan once it is approved by an adjudicating authority under sub-section (1) of Section 31 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as 'I&B Code')*
> *(ii) As to whether the amendment to Section 31 by Section 7 of Act 26 of 2019 is clarification/declaratory or substantive in nature?*
> *(iii) As to whether after approved of resolution plan by Adjudicating Authority a creditor including the Central Government, State Government or any local authority is entitled to initiate any proceedings for recovery of any of the dues from the Corporate Debtor, which are not a part of the Resolution Plan approved by the adjudicating*

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authority?

Conclusion

95. In the result, we answer the questions frames as under: -

(i) That once a resolution plan is duly approved by the Adjudicating Authority under subsection (1) of Section 31, the claims as provided in the resolution plan shall stand frozen and will be binding on the Corporate Debtor and its employees, members, creditors, including the Central Government, any State Government or any local authority, guarantors and other stakeholders. On the date of approval of resolution plan by the Adjudicating Authority, all such claims, which are not a part of resolution plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim, which is not part of the resolution plan;

(ii) 2019 amendment to Section 31 of the I&B Code is clarificatory and declaratory in nature and therefore will be effective from the date on which I&B Code has come into effect;

(iii) Consequently all the dues including the statutory dues owed to the Central Government, any State Government or any local authority, if not part of the resolution plan, shall stand extinguished and no proceedings in respect of such dues for the period prior to the date on which the Adjudicating Authority grants its approval under Section 31 could be continued".

In the above Judgment, the Hon'ble Supreme Court has held that once the Resolution Plan is approved by the Adjudicating Authority in terms of Section 31 (1) of the Insolvency and Bankruptcy Code 2016, all such claims, which are not a part of resolution plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim, which is not part of the Resolution Plan. The Supreme Court has held that the 2019 amendment to Section 31 of IBC, 2016 clarificatory and declaratory and will be effective from the date on which Insolvency and Bankruptcy Code has come into effect. The Hon'ble Supreme Court has held that all dues including the statutory dues which are not a part of the Resolution Plan shall stand extinguished and no proceedings in respect of such dues for the period prior to the date on which the Adjudicating Authority grants its approval under Section 31 could be continued.

177. The Claimant has placed reliance on the decisions of the Hon'ble Supreme Court in **Ghanshyam Mishra and Sons (P) Ltd. v. Edelweiss Asset Reconstruction Co. Ltd.** to contend that all claims not forming part of the approved resolution plan would stand extinguished. Upon consideration of the factual matrix in **Ghanshyam** case, it is seen that there is a fundamental distinction

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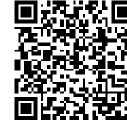

of facts and therefore, the ratio of those documents cannot be applied to the present case. In the case of Ghanshyam, the Clean Slate Theory (CST) was applied in favour of third-party Resolution Applicants who had no prior connection with the corporate debtor and who took over the company pursuant to a resolution plan approved under Section 31 of the IB Code. The ratio of the above judgment in Ghanshyam of the Hon'ble Supreme Court was clearly intended to shield bona fide, unrelated Resolution Applicants from the risk of undecided or undisclosed claims that could threaten the viability of the revival plan. The said decision in Ghanshyam Mishra is distinguishable on facts, since in the present case no third party Resolution-Applicant is involved.

178. Respondent contends that the Judgment of the Hon'ble Supreme Court in the **Ghanshyam Mishra and Sons Private Limited Vs Edelweiss Asset Reconstruction Company Limited, "2021 SCC Online SC 313"** is not applicable in the facts and circumstances of the present case. Respondent contends that in the present case, since Mr. Lakhotia himself submitted the Resolution Plan, the approval of the Resolution plan of Mr. Anjani Kumar Lakhotia did not result in the change in management and control of the corporate debtor that is the chairman herein as the old management/ promoter of the Claimant Mr. Anjani Kumar Lakhotia has himself revived the Claimant Company. As pointed out earlier, in the present case, the Resolution Plan was submitted by Mr. Lakhotia himself, who is none other than the promotor of the Claimant Company itself. The decision in the said judgment in **Ghanshyam Mishra** is clearly distinguishable on facts and not applicable to the present case.

179. The Claimant has further relied upon ***Electrosteel Steel Limited (Now Mis ESL Steel Limited) V. Ispat Carrier Private Limited, 2025 SCC OnLine SC 829*** wherein the Hon' ble Supreme Court has once again upheld the principle that the after the approval of the Resolution Plan, the claims of the creditors who were not a part of the Resolution Plan shall stand extinguished. Case of the Claimant is that the Respondent is barred from making any claim against the Claimant since the resolution plan has been approved the Adjudicating Authority and put into operation since 18.04.2018. Claimant contends that in terms of Section 31 of IBC, 2016, since the Respondent is not a part of Resolution Plan, the claims of the Respondent stands extinguished once the Resolution Plan is approved and put into operation.

180. On behalf of the Claimant, reliance has been placed upon the number of Impleadment Applications filed by **Telecommunications Consultants India Ltd. (TCIL)** filed against the Claimant in **IA No. 7202/2022 in CA 8411/2019** and it was submitted that the said Impleadment Applications were dismissed and the Respondent is positioned on the same footing

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and the Respondent therefore cannot make any claim against the Claimant. The said Application filed by TCIL was dismissed as withdrawn. As contended by the Respondent, the said Application was not adjudicated on merits and therefore based on the said order passed in IA No. 7202/2022, it cannot be held that the Respondent being out of Resolution Plan is barred from pursuing its counter claims.

181. On behalf of the Claimant, reliance was also placed upon number of other Applications filed by TCIL before the NCLT and also before NCLAT, against the Claimant and it was submitted that those Applications were dismissed. On behalf of the Respondent, Rejoinder Arguments were filed on 24.05.2025 distinguishing the facts of the said Applications filed by TCIL with the present case. As contended by the Respondent, the case of the Respondent stands on different footing as the Respondent has made its claim before the IRP and the same was partially admitted by the Interim Resolution Plan, though the same was not included in the Resolution Plan and consequently Respondent's claim was not shown as the Creditor in the Approved Resolution Plan. The case in hand stands on different footing interalia for the reasons: - (i) the Respondent's claim before the IRP was partially admitted and the Respondent' s name was shown as creditor at SI. No. 440 in the List of Creditors in Ex.RW- 1/ 13 ; but the same was not included in the Resolution Plan; (ii) Impleadment Application filed by the Respondent in the Supreme Court in IA No.13 8207 /2021 in Civil Appeal No.8411 /2 019 was allowed by the Supreme Court and that the Respondent has been recognized as the Creditor by the Hon'ble Supreme Court.

182. As pointed out above, the Respondent' s claim has been initially admitted by IRP and reflected in the list of Creditors at serial no.440 (Ex.RW-1/13). Though the Respondent' s claim was subsequently not included in the Resolution Plan, as discussed supra and infra the impleadment Application filed by the Respondent in IA No.138207 / 2021 before the Supreme Court in C.A. No.8411 of 2019 has been allowed by the Hon'ble Supreme Court. Meaning thereby that the Respondent has been recognized as the Creditor. On behalf of the Claimant, it was contended that the Claimant was never issued any notice in the said impleadment application and on the first date of listing of the said application, Bank of Baroda had made statement stating no objection for impleadment. It was in that context that while disposing of Civil Appeal No.8411 /2019 the Hon'ble Supreme Court allowed the Impleadment Application filed by the Respondent by the Order dated 18.01.2022. The Tribunal is of the view that the Hon'ble Supreme Court by allowing of the Impleadment Application filed by the Respondent in IA No.13 8207 /2021, the **Respondent has been recognized as the Creditor. It is held that though the**

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claim of the Respondent has been excluded from the Resolution Plan, considering the fact that the name of the Respondent has been shown as creditor in Ex.RW-1/13 - List of Creditors and SI. No. 440 and in view of the order of the Supreme Court allowing Respondent's Impleadment Application, it is held the Respondent is entitled to pursue its Counter Claims against the Claimant.

183. Further, as discussed earlier, some of the Financial Creditors to the Claimant Company, has filed an Appeal before NCLAT. The Hon'ble NCLAT by its Order dated 16.08.2019 has dismissed the appeal and upheld the Resolution Plan of the Claimant Company. In the appeal filed by the Bank of Baroda in C.A 8411 of 2019, the Hon'ble Supreme Court has observed that the Resolution Plan submitted by Mr. Anjanee Kumar Lakhotia (Respondent No. 3 in the Appeal filed before the Supreme Court) being ineligible and that the same is not maintainable. However, the Hon'ble Supreme Court did not choose to interfere with the Resolution Plan and order of the approval of the Resolution Plan by observing that the Resolution Plan has been put into operation since 18.04.2018 and that MBL Infrastructure is an ongoing concern. Relevant paras (Paras 62 to 65 of the said judgment) of the judgment of the Hon'ble Supreme Court in the said appeal - *Bank of Baroda v. MEL Infrastructures Ltd., (2022) 5 SCC 661: 2022 SCC Online SC 48* reads as under: -

> **62.** Having held so, we would like to come to the last part of our order. **Though the very resolution plan submitted by Respondent 3, being ineligible is not maintainable, much water has flown under the bridge. The requisite percentage of voting share has been achieved. We may also note that the percentage has been brought down from 75% to 66% by way of an amendment to Section 30(4) of the Code.**
>
> **63.** Secondly, majority of the creditors have given their approval to the resolution plan. The adjudicating authority has rightly noted that it was accordingly approved after taking into consideration, the techno-economic report pertaining to the viability and feasibility of the plan. The plan is also put into operation since 18-4-2018, and as of now Respondent 1 is an on-going concern. Though, Respondent 11 has taken up the plea that its offer was conditional, it has got a very minor share which may not be sufficient to impact by adding it with that of the appellant and Respondent 7. Respondent 7 and Respondent 11 did not choose to challenge the order of the Appellate Tribunal.
>
> **64.** We need to take note of the interest of over 23,000 shareholders and thousands of employees of Respondent

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1. Now, about Rs 300 crores has also been approved by the shareholders to be raised by Respondent 1. It is stated that about Rs 63 crores has been infused into Respondent 1 to make it functional. There are many on-going projects of public importance undertaken by Respondent 1 in the nature of construction activities which are at different stages.

65. We remind ourselves of the ultimate object of the Code, which is to put the corporate debtor back on the rails. Incidentally, we also note that no prejudice would be caused to the dissenting creditors as their interests would otherwise be secured by the resolution plan itself, which permits them to get back the liquidation value of their respective credit limits. Thus, on the peculiar facts of the present case, we do not wish to disturb the resolution plan leading to the on-going operation of Respondent 1.

(Emphasis added)

By a reading of the judgment of the Hon 'ble Supreme Court, it is seen that the Supreme Court did not disturb/ interfere in the Resolution Plan of the Claimant Company (despite Mr. Lakhotia being found to be ineligible) has been upheld by the Supreme Court keeping in view the interest of the 23,000 shareholders (of the Claimant - MBL), and thousands of employees of MBL and that the objective of the IBC to put the Corporate Debtor back on its rails. The Hon'ble Supreme Court in its judgment held that though the Respondent No.3 thereon - Mr. Anjani Kumar is ineligible to submit the plan, the Supreme Court did not disturb the Resolution Plan as the same has been put into implementation from 18.04.2018, and that about Rs.63 crores has been infused to MBL Infrastructure and in such peculiar facts of the case. The Hon'ble Supreme Court did not interfere with the Resolution Plan. Thus, in the peculiar facts of the case, the Supreme Court held that it does not wish to disturb the Resolution Plan leading to the ongoing operation of the MBL on the ground that the Resolution plan has been put into operation 18.04.2018.

184. <u>Claimant MBL is an ongoing concern</u>:- The Claimant Company has gone through a successful Corporate Insolvency Resolution Proceedings and the Resolution Plan of the Claimant Company has also been put into Operation. The Claimant Company - MBL Infrastructures being a public Company is still listed in the BSE and NSE and the Claimant Company is now an ongoing concern. The objective of the IBC, 2016 is to put the Corporate Debtor back on the rails and the Claimant company having gone through a successful CIRP has been given a fresh and clean slate upon approval of the Resolution Plan by the Adjudicating. The Claimant has contended that the Resolution Plan has been approved and the same excludes the Respondent's name

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and therefore the Respondent's claim stands extinguished. As discussed earlier the Contract has been foreclosed on 26.07.2016 and the CIRP of the Claimant Company has been initiated on 30.03 .2017. The Respondent has submitted its claim before the IRP on the basis of RA Bill No. 12 and the name of the Respondent was included in the List of creditors prepared by the IRP. Subsequently, the IRP Mr. Atanu Mukherjee has been replaced by the Committee of Creditors. By the Order of NCLT, Mr. Sanjeev Ahuja was appointed as a Resolution Professional on 18.07.2017. The Claimant has officially terminated the Respondent's Contract only on 16.09.2017. The Final Resolution Plan has been submitted on 22.11.2017 and the same has been approved by NCL T on 18.04.2018 and the same has been put into operation. It is to be pointed out that the Bihar Government has terminated the Parent Contract only on 13.01.2018. The Claimant has officially terminated the Contract with the Respondent while undergoing the CIRP Proceedings and the Parent Contract has been terminated only after the submission of the Resolution Plan. While so, the Claim of the Respondent cannot be brushed aside by stating that the Claim of the Respondent relates to the period prior to the approval of the Resolution process.

185. Though Respondent did not challenge Resolution Plan, Respondent filed an Impleadment Application in Civil Appeal No.8411 of 2019 shows the intention of the Respondent to claim payment for the works that the Respondent has executed in terms of the Work Order dated 23.04.2015. Moreover, in the Impleadment Application the Respondent was recognised as an 'Operational Creditor' by the Hon'ble Supreme Court's Order dated 26.10.2021. The Parent Contract has been terminated on 13.01.2018 after the submission of the Resolution Plan and therefore the Counter Claims raised by the Respondent are very well maintainable. The Claimant has also not produced any documents to substantiate its contention that Rs.1 ,87,57,863/- was actually payable by the Respondent to the Claimant. The Claimant's contention that the Respondent's claim being not a part of the approved Resolution Plan and therefore, Respondent is not entitled to the claim amount does not merit acceptance. For the works executed by Respondent, in terms Work Order dated 23.04.2015, the Claimant has received payment from WRD. The Claimant having received the amount from WRD, Government of Bihar for the works executed by the Respondent, the Claimant is bound to pay the amount to the Respondent who has executed the work. It is therefore held that the Counter Claims made by the Respondent in the Present Arbitration Proceedings are maintainable. The Respondent is entitled to raise its claim for the work executed by the Respondent.

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186. <u>Conclusion on Issue No. 6:</u> - The Respondent's claim has been initially admitted by IRP and reflected in the list of Creditors at serial no.440 (Ex.RW-1/13); but the same was not included subsequently. Though the Respondent's claim was not subsequently included in the Resolution Plan, the Tribunal is of the view that the allowing of the lmpleadment Application filed by the Respondent in IA No.138207/2021, the Respondent has been recognized as the Creditor. As per the Judgment of the Supreme Court, though Mr. Anjani Kumar Lakhotia was not eligible to submit the Resolution Plan, the Supreme Court did not interfere with the judgement of NCLT and NCLAT and keeping in view the interest of the Shareholders and the Employees and that the Resolution Plan has been put to implementation from 18.04.2018. The Supreme Court did not interfere with the Resolution Plan submitted by Mr. Anjani Kumar Lakhotia which has been approved by NCLT and NCLAT. Having regard to the above facts and keeping in view that the Claimant company is an ongoing concern, it is held that though the claim of the Respondent was not included in the Resolution Plan, in view of the order of the Supreme Court allowing Respondent's Impleadment Application, the Respondent being recognised as Creditor, it is held that the Respondent is entitled to pursue its Counter Claims against the Claimant. The Respondent is entitled to its claim for the work executed by the Respondent. Further, the works executed by Respondent, in terms Work Order dated 23.04.2015, the Claimant has received payment from WRD. The Claimant having received the amount from WRD, Government of Bihar for the works executed by the Respondent, the Claimant is bound to pay the amount to the Respondent who has executed the work. It is therefore held that the Counter Claims made by the Respondent in the Present Arbitration Proceedings are maintainable."

22. From a perusal of the above extracted portion of the Impugned Award, it is evident that the entire contemplation and underlying reasoning, on the basis of which the learned Arbitrator held that the counterclaims are maintainable in the facts and circumstances of the present case, essentially rests on the following grounds:

(a) Insolvency proceedings were initiated against the Claimant, and the Respondent duly filed its claim before the IRP in accordance with the provisions of the IBC.

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(b) Upon verification, the IRP partially admitted the Respondent's claim to the extent of approximately Rs. 1.87 crore and included the same in the official List of Creditors, thereby recognising the Respondent as a creditor.

(c) However, despite such admission, the Respondent's claim was subsequently not included in the final Resolution Plan approved under the IBC framework.

(d) The Claimant contended that in terms of Section 31 of the IBC, any claim not forming part of the approved Resolution Plan stands extinguished and cannot be pursued further.

(e) The learned Tribunal, upon appreciation of the record, found the List of Creditors to be genuine and reliable, clearly establishing that the Respondent was a recognised creditor with an admitted claim.

(f) It was further noted that the Respondent was impleaded before the Hon'ble Supreme Court and recognised as an Operational Creditor, thereby reinforcing its legal status and entitlement.

(g) The learned Tribunal distinguished the applicability of the "*clean slate*" principle, holding the same to be inapplicable in the present case, particularly as the Resolution Plan had been submitted by the promoter himself and there was no effective change in management or control.

(h) The learned Tribunal also took note of the fact that the Claimant had already received payment for the work executed by the Respondent and, therefore, could not unjustly deny payment to the Respondent for the same.

(i) The exclusion of the Respondent's admitted claim from the

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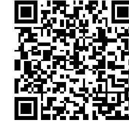

Resolution Plan was held to be unjustified and unsupported by the material on record.

(j) In view of the aforesaid factors, it was concluded that the Respondent's claim does not stand extinguished merely on account of its exclusion from the Resolution Plan, and consequently, the counterclaims raised by the Respondent are maintainable.

23. Now, this Court proceeds to examine the legality and sustainability of the aforesaid line of reasoning as adopted by the learned Arbitrator. For this purpose, it is necessary to notice certain undisputed facts emerging from the record.

24. It is an admitted position that the Respondent had submitted its claim before the IRP during the CIRP initiated against the Claimant under the IBC, and the said claim was consciously pursued within the statutory framework governing insolvency proceedings. Thereafter, the CIRP progressed in accordance with law and culminated in the formulation of a Resolution Plan, which was duly approved by the Committee of Creditors and subsequently placed before the learned Adjudicating Authority/NCLT for its approval.

25. It is an undisputed position that the Resolution Plan submitted in respect of the Claimant-Corporate Debtor came to be approved by the learned Adjudicating Authority on 18.04.2018. The approval of the Resolution Plan marked the statutory culmination of the CIRP, and the Plan consequently attained binding force in accordance with the scheme envisaged under the IBC. It is further evident from the record that the Respondent was fully aware of the CIRP proceedings and had, in fact, participated therein by lodging its claim before the Resolution

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Professional. Despite such participation, the Respondent did not avail itself of the remedies provided under the IBC framework to challenge the alleged non-inclusion or inadequate treatment of its claims in the Resolution Plan before the competent fora.

26. Notwithstanding the aforesaid, the Respondent, in the present proceedings, seeks to sustain its counterclaims even after the approval of the Resolution Plan. This approach has been assailed by the Claimant on the ground that, upon approval of the Resolution Plan by the learned Adjudicating Authority, the rights and liabilities of all stakeholders stand conclusively determined and crystallised within the contours of the Plan. It is, therefore, the contention of the Claimant that the learned Tribunal fell in error in permitting the Respondent to pursue counterclaims which, according to the Claimant, stood extinguished upon such approval.

27. In order to appreciate the rival contentions, it becomes necessary to advert to the statutory framework embodied in Section 31 of the IBC, which accords binding force and finality to a Resolution Plan once it is approved by the learned Adjudicating Authority. Section 31(1) of the IBC stipulates that upon satisfaction that the Resolution Plan, as approved by the Committee of Creditors, complies with the requirements set out in the other provisions of the IBC, the learned Adjudicating Authority shall approve the Plan. Upon such approval, the Resolution Plan becomes binding on the corporate debtor and all stakeholders, including creditors, governmental authorities, guarantors, and other concerned parties. For the sake of completeness, the relevant provision is reproduced herein below:

> **31. Approval of resolution plan -** (1) If the Adjudicating Authority is satisfied that the resolution plan as approved by the

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committee of creditors under sub-section (4) of section 30 meets the requirements as referred to in sub-section (2) of section 30, it shall by order approve the resolution plan which shall be binding on the corporate debtor and its employees, members, creditors, including the Central Government, any State Government or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force, such as authorities to whom statutory dues are owed, guarantors and other stakeholders involved in the resolution plan.

Provided that the Adjudicating Authority shall, before passing an order for approval of resolution plan under this sub-section, satisfy that the resolution plan has provisions for its effective implementation.

(2) Where the Adjudicating Authority is satisfied that the resolution plan does not confirm to the requirements referred to in sub-section (1), it may, by an order, reject the resolution plan.

(3) After the order of approval under sub-section (1),:-

(a) the moratorium order passed by the Adjudicating Authority under section 14 shall cease to have effect; and

(b) the resolution professional shall forward all records relating to the conduct of the corporate insolvency resolution process and the resolution plan to the Board to be recorded on its database.

(4) The resolution applicant shall, pursuant to the resolution plan approved under sub-section (1), obtain the necessary approval required under any law for the time being in force within a period of one year from the date of approval of the resolution plan by the Adjudicating Authority under sub-section (1) or within such period as provided for in such law, whichever is later.

Provided that where the resolution plan contains a provision for combination, as referred to in section 5 of the Competition Act, 2002, the resolution applicant shall obtain the approval of the Competition Commission of India under that Act prior to the approval of such resolution plan by the committee of creditors."

(emphasis supplied)

28. The statutory consequence of approval under Section 31 of the IBC is, therefore, unambiguous. Once the Resolution Plan is approved, it attains finality and becomes binding on all stakeholders without exception. The legislative intent underlying the IBC framework is that all claims pertaining to the period prior to the approval of the Resolution Plan must be submitted, verified, and

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resolved within the CIRP itself. Any claim not forming part of the approved Resolution Plan is, by necessary implication, extinguished. Permitting the revival or independent adjudication of such claims *dehors* the Resolution Plan would not only defeat the finality attached to the insolvency resolution process but also run contrary to the core objective of the IBC, which is to provide a clean slate to the successful resolution applicant and ensure certainty in commercial affairs.

29. In this backdrop, it is also apposite to note that the legal position regarding the effect of approval of a Resolution Plan under Section 31 of the IBC is no longer *res integra*. Judicial pronouncements have consistently held that upon approval of a Resolution Plan, all prior claims stand extinguished and no person is entitled to initiate or continue proceedings in respect of claims that are not incorporated in the Plan. The binding nature of the Resolution Plan, coupled with the extinguishment of undecided claims, forms the bedrock of the insolvency regime and ensures that the resolution process achieves finality and conclusiveness.

30. Recently, in ***JSW Ispat*** *(supra)*, the Co-Ordinate Bench of this Court, while relying upon numerous judgments of the Hon'ble Supreme Court, observed that once a Resolution Plan is approved by the learned Adjudicating Authority under Section 31(1) of the IBC, the claims incorporated in the Resolution Plan stand frozen and become binding on the corporate debtor and all stakeholders. It was further observed that any claim not forming part of the approved Resolution Plan stands extinguished and no person would thereafter be entitled to initiate or continue proceedings in respect of such

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claims. The relevant observations are extracted herein below:

> "**36.** ….. Before proceeding to determine this question, it would be pertinent to closely look at the law on the subject. In ***Ghanashyam Mishra*** (supra), the Supreme Court held that once a Resolution Plan is duly approved by the adjudicating authority under Section 31(1) of IBC, the claims as provided in the Resolution Plan stand frozen and will be binding on the Corporate Debtor and its employees, members, creditors, including the Central Government, State Government or any local body, guarantors and other stakeholders. It was further held that claims, which are not a part of Resolution Plan on the date of its approval, shall also stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to such claims, which are not part of the Resolution Plan. In fact, even in respect of statutory dues owed to the Central or State Government or any local authority, it was held that if these dues were not part of the Resolution Plan, they shall stand extinguished and no proceedings in respect of such dues for the period prior to the date on which the adjudicating authority grants its approval under Section 31 could be continued. Relevant paragraphs from the judgment are as follows: -
>
> > "***61.*** *It could thus be seen that one of the dominant objects of the I&B Code is to see to it that an attempt has to be made to revive the corporate debtor and make it a running concern. For that, a resolution applicant has to prepare a resolution plan on the basis of the information memorandum. The information memorandum, which is required to be prepared in accordance with Section 29 of the I&B Code along with Regulation 36 of the Regulations, is required to contain various details, which have been gathered by RP after receipt of various claims in response to the statutorily mandated public notice. The resolution plan is required to provide for the payment of insolvency resolution process costs, management of the affairs of the corporate debtor after approval of the resolution plan; the implementation and supervision of the resolution plan. It is only after the adjudicating authority satisfies itself that the plan as approved by CoC with the requisite voting share of financial creditors meets the requirement as referred to in sub-section (2) of Section 30, grants its approval to it. It is only thereafter that the said plan is binding on the corporate debtor as well as its employees, members, creditors, guarantors and other stakeholders involved in the resolution plan. The moratorium order passed by the adjudicating authority under Section 14 shall cease to operate once the adjudicating authority approves the resolution plan. The*

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scheme of the I&B Code therefore is, to make an attempt, by divesting the erstwhile management of its powers and vesting it in a professional agency to continue the business of the corporate debtor as a going concern until a resolution plan is drawn up. Once the resolution plan is approved, the management is handed over under the plan to the successful applicant so that the corporate debtor is able to pay back its debts and get back on its feet.

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***65.** Bare reading of Section 31 of the I&B Code would also make it abundantly clear that once the resolution plan is approved by the adjudicating authority, after it is satisfied, that the resolution plan as approved by CoC meets the requirements as referred to in sub-section (2) of Section 30, it shall be binding on the corporate debtor and its employees, members, creditors, guarantors and other stakeholders. Such a provision is necessitated since one of the dominant purposes of the I&B Code is revival of the corporate debtor and to make it a running concern.*

***66.** The resolution plan submitted by the successful resolution applicant is required to contain various provisions viz. provision for payment of insolvency resolution process costs, provision for payment of debts of operational creditors, which shall not be less than the amount to be paid to such creditors in the event of liquidation of the corporate debtor under Section 53; or the amount that would have been paid to such creditors, if the amount to be distributed under the resolution plan had been distributed in accordance with the order of priority in sub-section (I) of Section 53, whichever is higher. The resolution plan is also required to provide for the payment of debts of financial creditors, who do not vote in favour of the resolution plan, which also shall not be less than the amount to be paid to such creditors in accordance with sub-section (I) of Section 53 in the event of a liquidation of the corporate debtor. Explanation I to clause (b) of sub-section (2) of Section 30 of the I&B Code clarifies for the removal of doubts that a distribution in accordance with the provisions of the said clause shall be fair and equitable to such creditors. The resolution plan is also required to provide for the management of the affairs of the corporate debtor after approval of the resolution plan and also the implementation and supervision of the resolution plan. Clause (e) of sub-section (2) of Section 30 of the I&B Code also casts a duty on RP to examine that the resolution plan does not contravene any of the provisions of the law for the time being in force.*

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67. *Perusal of Section 29 of the I&B Code read with Regulation 36 of the Regulations would reveal that it requires RP to prepare an information memorandum containing various details of the corporate debtor so that the resolution applicant submitting a plan is aware of the assets and liabilities of the corporate debtor, including the details about the creditors and the amounts claimed by them. It is also required to contain the details of guarantees that have been given in relation to the debts of the corporate debtor by other persons. The details with regard to all material litigation and an ongoing investigation or proceeding initiated by the Government and statutory authorities are also required to be contained in the information memorandum. So also the details regarding the number of workers and employees and liabilities of the corporate debtor towards them are required to be contained in the information memorandum.*

68. *All these details are required to be contained in the information memorandum so that the resolution applicant is aware as to what are the liabilities that he may have to face and provide for a plan, which apart from satisfying a part of such liabilities would also ensure, that the corporate debtor is revived and made a running establishment. The legislative intent of making the resolution plan binding on all the stakeholders after it gets the seal of approval from the adjudicating authority upon its satisfaction, that the resolution plan approved by CoC meets the requirement as referred to in sub-section (2) of Section 30 is that after the approval of the resolution plan, no surprise claims should be flung on the successful resolution applicant. The dominant purpose is that he should start with fresh state on the basis of the resolution plan approved.*

69. *This aspect has been aptly explained by this Court in* ***Essar Steel (India) Ltd. (CoC) v. Satish Kumar Gupta*, (2020) 8 SCC 531**: *(SCCp. 616, para 107)*

> "*107. For the same reason, the impugned NCLAT judgment in* Standard Chartered Bank *v.* Satish Kumar Gupta [Standard Chartered Bank *v.* Satish Kumar Gupta, 2019 SCC OnLine NCLAT 388] *in holding that claims that may exist apart from those decided on merits by the resolution professional and by the adjudicating authority/Appellate Tribunal can now be decided by an appropriate forum in terms of Section 60(6) of the Code, also militates against the rationale of Section 31 of*

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the Code. A successful resolution applicant cannot suddenly be faced with "undecided" claims after the resolution plan submitted by him has been accepted as this would amount to a hydra head popping up which would throw into uncertainty amounts payable by a prospective resolution applicant who would successfully take over the business of the corporate debtor. All claims must be submitted to and decided by the resolution professional so that a prospective resolution applicant knows exactly what has to be paid in order that it may then take over and run the business of the corporate debtor. This the successful resolution applicant does on a fresh slate, as has been pointed out by us hereinabove. For these reasons, NCLAT judgment [***Standard Chartered Bank v. Satish Kumar Gupta*, 2019 SCC OnLine NCLAT 388**] *must also be set aside on this count.*"

***70.** In view of this legal position, we could have very well stopped here and held that the observation made by NCLAT in the appeal filed by EARC to the effect that EARC was entitled to take recourse to such remedies as are available to it in law, is impermissible in law.*

71. As held by this Court in ***CIT v. Monnet Ispat & Energy Ltd*., (2018) 18 SCC 786**, *in view of the provisions of Section 238 of the I&B Code, the provisions thereof will have an overriding effect, if there is any inconsistency with any of the provisions of the law for the time being in force or any instrument having effect by virtue of any such law. As such, the observations made by NCLAT to the aforesaid effect, if permitted to remain, would frustrate the very purpose for which the I&B Code is enacted.*

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Conclusion

***102.** In the result, we answer the questions framed by us as under:*

***102.1.** That once a resolution plan is duly approved by the adjudicating authority under sub-section (1) of Section 31, the claims as provided in the resolution plan shall stand frozen and will be binding on the corporate debtor and its employees, members, creditors, including the Central Government, any State Government or any local authority, guarantors and other stakeholders. On the date of approval of resolution plan by the adjudicating authority, all such claims, which are not a part of resolution plan,*

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shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim, which is not part of the resolution plan.

102.2. *The 2019 Amendment to Section 31 of the I&B Code is clarificatory and declaratory in nature and therefore will be effective from the date on which the I&B Code has come into effect.*

102.3. *Consequently all the dues including the statutory dues owed to the Central Government, any State Government or any local authority, if not part of the resolution plan, shall stand extinguished and no proceedings in respect of such dues for the period prior to the date on which the adjudicating authority grants its approval under Section 31 could be continued.*

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123. *It is thus clear that according to the resolution plan submitted by EARC itself had it been a successful applicant, then in that event, the claims made by it would have been irrevocably waived and permanently extinguished and written off in full with effect from the effective date. Had the resolution plan of EARC been approved, then all such debts would have stood extinguished without any further act or deed and approval of the said plan by NCLT would have been a sufficient notice required to be given to any person for such matter. Undisputedly, the resolution plan submitted by EARC was on the basis of the information memorandum submitted by RP wherein, it was specifically clarified that the claims of EARC were not admitted by RP. It is thus clear that EARC is trying to blow hot and cold at the same time. According to it, had its resolution plan been approved by CoC and NCLT, then the claims, which are now insisted by EARC would have stood extinguished. However, on its failure to become a successful resolution applicant and approval of other applicant as a successful resolution applicant, its claim would survive. A party cannot be permitted to apply two different yardsticks.*

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….”

37. In ***Committee of Creditors of Essar Steel India Limited through Authorised Signatory* v. *Satish Kumar Gupta*, (2020) 8 SCC 531**, the Supreme Court observed that the impugned judgment of the NCLT, wherein it was held that claims that may exist apart from those decided on merits by the RP and the adjudicating authority/Appellate Tribunal can be decided by an appropriate forum under Section 60(6) of IBC, militates against the rationale of Section 31 IBC. A successful Resolution Applicant

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cannot suddenly be faced with 'undecided' claims after the Resolution Plan submitted by him has been accepted as this would amount to hydra heads popping up, which would throw into 'uncertainty' amounts payable by a prospective Resolution Applicant, who successfully takes over the business of the Corporate Debtor. It was observed that all claims must be submitted to and decided by the Resolution Professional so that a prospective Resolution Applicant knows exactly what has to be paid in order that it may then take over and run the business on a 'fresh slate'.

38. This view was reiterated by the Supreme Court in ***Ruchi Soya Industries Limited* v. *Union of India*, (2022) 6 SCC 343; *Ajay Kumar Radheyshyam Goenka* v. *Tourism Finance Corporation of India Limited*, (2023) 10 SCC 545;** and ***RPS Infrastructure Limited* v. *Mukul Kumar*, (2023) 10 SCC 718**. In a recent decision in ***Electrosteel*** (supra), the Supreme Court has reaffirmed that once the Resolution Plan is approved, it binds all stakeholders and all claims, which do not form part of the approved Plan, will stand extinguished. Relevant passages from the judgment are as follows: -

> "***30.*** *An important question arose for consideration in* ***Ghanashyam Mishra and Sons P. Ltd. v. Edelweiss Asset Reconstruction Co. Ltd.*, (2021) 227 Comp Cas 251 (SC)**. *Again a three-judge Bench of this court examined a question as to whether any creditor including the Central Government, State Government or any local authority is bound by the resolution plan once it is approved by the Adjudicating Authority under sub-section (1) of section 31 of the Insolvency and Bankruptcy Code? A corollary to the above question was the issue as to whether after approval of the resolution plan by the Adjudicating Authority, a creditor including the Central Government, State Government or any local authority is entitled to initiate any proceeding for recovery of any of the dues from the corporate debtor which are not a part of the resolution plan approved by the Adjudicating Authority. In that case, the Bench concluded by holding that once a resolution plan is duly approved by the Adjudicating Authority under sub-section (1) of section 31, the claims as provided in the resolution plan shall stand frozen and will be binding on the corporate debtor and its employees, members, creditors, including the Central Government, any State Government or any local authority, guarantors and other stakeholders. On the date of approval of the resolution plan by the Adjudicating Authority, all such claims which are not a part of the resolution plan shall stand extinguished and no person*

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will be entitled to initiate or continue any proceeding in respect to a claim which is not part of the resolution plan. The Bench declared that all dues including statutory dues owed to the Central Government, any State Government or any local authority if not part of the resolution plan shall stand extinguished and no proceeding in respect of such dues for the period prior to the date on which the Adjudicating Authority grants its approval under section 31 could be continued. Paragraph 102 of the aforesaid decision reads thus

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31. *In* **Ruchi Soya Industries Ltd.,** *a two-judge Bench of this court referred to the decision in Ghanashyam Mishra and thereafter declared that on the date on which the resolution plan was approved by the National Company Law Tribunal, all claims stood frozen and no claim, which is not a part of the resolution plan, would survive.*

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33. *In a recent decision, a two-judge Bench of this court decided a contempt application in* **JSW Steel Ltd. v. Pratishtha Thakur Haritwal**. *Contention of the petitioner was that the respondents had wilfully disobeyed the judgment of this court in* Ghanashyam Mishra *by issuing demand notices pertaining to the period covered by the corporate insolvency resolution process. In the above context, the Bench reiterated what was held in Ghanashyam Mishra which has been followed in subsequent decisions and thereafter declared that all claims which are not part of the resolution plan shall stand extinguished. No person will be entitled to initiate or continue any proceeding in respect to a claim which is not part of the resolution plan. Though the Bench did not take any action for contempt in view of the unconditional apology made by the respondents nonetheless the Bench reiterated the proposition laid down in Ghanashyam Mishra clarifying that even if any stakeholder is not a party to the proceedings before the National Company Law Tribunal and if such stakeholder does not raise its claim before the interim resolution professional/resolution professional, the resolution plan as approved by the National Company Law Tribunal would still be binding on him.*

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50. *In so far the second and third issues are concerned, it is by now well settled that once a resolution plan is duly approved by the Adjudicating Authority under sub-section (I) of section 31, all claims which are not part of the*

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resolution plan shall stand extinguished and no person will be entitled to initiate or continue any proceeding in respect to a claim which is not part of the resolution plan. In fact, this court in ***Committee of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta*, (2020) 219 Comp Cas 97** *(SC); had categorically declared that a successful resolution applicant cannot be faced with undecided claims after the resolution plan is accepted. Otherwise, this would amount to a hydra head popping up which would throw into uncertainty the amount payable by the resolution applicant. In so far the resolution plan is concerned, the resolution professional, the committee of creditors and the Adjudicating Authority noted about the claim lodged by the respondent in the arbitration proceeding. However, the respondent was not included in the top 30 operational creditors whose claims were settled at nil. This can only mean that the three authorities conducting the corporate insolvency resolution process did not deem it appropriate to include the respondent in the top 30 operational creditors. If the claims of the top 30 operational creditors were settled at nil, it goes without saying that the claim of the respondent could not be placed higher than the said top 30 operational creditors. Moreover, the resolution plan itself provides that all claims covered by any suit, cause of action, arbitration, etc., shall be settled at nil. Therefore, it is crystal clear that in so far claim of the respondent is concerned, the same would be treated as nil at par with the claims of the top 30 operational creditors.*

50.1. *Lifting of the moratorium does not mean that the claim of the respondent would stand revived notwithstanding approval of the resolution plan by the Adjudicating Authority. The moratorium is intended to ensure that no further demands are raised or adjudicated upon during the corporate insolvency resolution process so that the process can be proceeded with and concluded without further complications. The view taken by the High Court cannot be accepted in the light of the clear cut provisions of the Insolvency and Bankruptcy Code as well as the law laid down by this court. In view of the resolution plan, as approved, the claim of the respondent stood extinguished. Therefore, the Facilitation Council did not have the jurisdiction to arbitrate on the said claim. Since the award was passed without jurisdiction, the same could be assailed in a proceeding under section 47 of the Code of Civil Procedure. The view taken by the High Court that because the appellant did not challenge the*

award under section 34 of the 1996 Act, therefore, it was precluded from objecting to execution of the award at the stage of section 47 of the Code of Civil Procedure is wholly unsustainable.

***51.** Consequently, the view taken by the High Court that notwithstanding approval of the resolution plan by the National Company Law Tribunal, the Facilitation Council did not lose Jurisdiction to proceed and pronounce the arbitral award, is erroneous and contrary to the law laid down by this court.*

***52.** In that view of the matter, we have no hesitation to hold that upon approval of the resolution plan by the National Company Law Tribunal, the claim of the respondent being outside the pundew of the resolution plan stood extinguished. Therefore, the award dated July 6, 2018 is incapable of being executed. Consequently, the order dated March 3, 2023 passed by the Presiding Officer, Commercial Court/District Judge-I, Bokaro in Commercial Execution Case No. 21 of 2022 (Execution Case No. 77 of 2018) is hereby set aside. Execution proceedings in Commercial Execution Case No. 21 of 2022 (Execution Case No. 77 of 2018) pending in the Court of Presiding Officer, Commercial Court/District Judge-I, Bokaro, are hereby quashed. Resultantly, impugned order of the High Court dated July 17, 2023 is also set aside.*"

39. It is thus clear from a conspectus of the aforementioned judgments that all such claims, which are not a part of the Resolution Plan on the date of approval, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect of claims, which are not part of the Resolution Plan and so much so this would apply to the statutory dues owed to Central/State Governments, local bodies etc. In the instant case, the claims which were referred to arbitration were not part of the approved Resolution Plan and stood extinguished and were thus not arbitrable.

40. In ***Electrosteel*** (supra), the Supreme Court was examining the validity of the arbitral award in respect of claims of the Creditor, which were outside the approved Resolution Plan. After a detailed and extensive discussion on the provisions of IBC and referring to all the earlier judgments of the Supreme Court on this aspect, it was held that the Facilitation Council under the MSME Act, did not have the jurisdiction to arbitrate on the claims which stood extinguished on approval of the Resolution Plan and therefore, the arbitral award was without jurisdiction. Pertinently, in this case it was mentioned in the Resolution Plan that any and all claims or demands, admitted or not, due or contingent, asserted or

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unasserted, known or unknown, present or future etc., would be written off in full and deemed to be permanently extinguished by virtue of order of NCLT approving the Resolution Plan with a special emphasis that the Consortium or Company, will not be held responsible or liable, at any point of time, directly or indirectly."

(emphasis supplied)

31. In the present case, it is an admitted position that the Respondent participated in the CIRP by submitting its claim before the Interim Resolution Professional. Having consciously elected to pursue its claim within the insolvency framework, the Respondent subjected itself to the statutory process and the ultimate outcome thereof, including the manner in which its claim was dealt with under the Resolution Plan. Once the CIRP culminated in the approval of the Resolution Plan, the Respondent became bound by its terms. It is, therefore, impermissible for the Respondent to subsequently re-agitate the very same claim in collateral proceedings under the guise of arbitral counterclaims. The record further demonstrates that although the Respondent initially participated in the CIRP and its claim was reflected in the list of creditors, the same did not find a place in the final Resolution Plan. Despite this, the Respondent failed to avail itself of the remedies provided under the IBC to challenge either the non-inclusion or the alleged inadequate treatment of its claim before the competent fora.

32. In continuation thereof, it is necessary to examine the statutory framework under the IBC, which provides a comprehensive mechanism for adjudication and appeal in matters arising out of the insolvency resolution process. Chapter VI of Part II of the IBC, titled "*Adjudicating Authority for Corporate Persons*", clearly delineates the forums competent to determine disputes relating to insolvency

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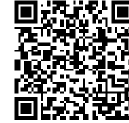

proceedings and prescribes the appellate hierarchy. The legislative scheme envisages a complete and self-contained adjudicatory structure, with the learned NCLT as the adjudicating authority and the learned NCLAT as the appellate forum.

33. Section 60 of the IBC expressly designates the learned NCLT as the adjudicating authority in relation to insolvency resolution and liquidation of corporate persons. Section 60(5) of the IBC further confers wide and residuary jurisdiction upon the learned NCLT to entertain and dispose of any application or proceeding by or against the corporate debtor, as well as any question of law or fact arising out of or in relation to the insolvency resolution process. The provision, by employing a non obstante clause, overrides other laws and vests the learned NCLT with expansive authority to adjudicate all matters connected with the CIRP, including claims and disputes pertaining thereto. For ready reference, the relevant portion of Section 60 of the IBC is reproduced hereunder:

> "**60. Adjudicating authority for corporate persons. –**
>
> *****
>
> *(5)* Notwithstanding anything to the contrary contained in any other law for the time being in force, the National Company Law Tribunal shall have jurisdiction to entertain or dispose of—
>
> *(a)* any application or proceeding by or against the corporate debtor or corporate person;
>
> *(b)* any claim made by or against the corporate debtor or corporate person, including claims by or against any of its subsidiaries situated in India; and
>
> *(c)* any question of priorities or any question of law or facts, arising out of or in relation to the insolvency resolution or liquidation proceedings of the corporate debtor or corporate person under this Code."
>
> ***(emphasis supplied)***

34. The IBC further provides a structured appellate remedy under Section 61 of the IBC, enabling any person aggrieved by an order of

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the learned Adjudicating Authority/NCLT, particularly an order approving a Resolution Plan under Section 31 of the IBC, to prefer an appeal before the learned NCLAT. Such an appeal may be instituted on specific statutory grounds, including contravention of law, material irregularity in the conduct of the CIRP, improper treatment of operational creditors, or non-compliance with the requirements prescribed by the Insolvency and Bankruptcy Board of India. Thus, the statute ensures that any grievance relating to the resolution process is capable of being effectively addressed within the appellate framework itself. Section 61 of the IBC reads as follows:

> "**61. Appeals and Appellate Authority**. - (1) Notwithstanding anything to the contrary contained under the Companies Act, 2013, any person aggrieved by the order of the Adjudicating Authority under this Part may prefer an appeal to the National Company Law Appellate Tribunal.
>
> (2) Every appeal under sub-section (1) shall be filed within thirty days before the National Company Law Appellate Tribunal:
>
> Provided that the National Company Law Appellate Tribunal may allow an appeal to be filed after the expiry of the said period of thirty days if it is satisfied that there was sufficient cause for not filing the appeal but such period shall not exceed fifteen days.
>
> (3) An appeal against an order approving a resolution plan under section 31 may be filed on the following grounds, namely: -
>
> (i) the approved resolution plan is in contravention of the provisions of any law for the time being in force;
>
> (ii) there has been material irregularity in exercise of the powers by the resolution professional during the corporate insolvency resolution period;
>
> (iii) the debts owed to operational creditors of the corporate debtor have not been provided for in the resolution plan in the manner specified by the Board;
>
> (iv) the insolvency resolution process costs have not been provided for repayment in priority to all other debts; or
>
> (v) the resolution plan does not comply with any other criteria specified by the Board.
>
> (4) An appeal against a liquidation order passed under section 33 may be filed on grounds of material irregularity or fraud committed in relation to such a liquidation order."
>
> ***(emphasis supplied)***

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35. The legislative architecture of the IBC, therefore, unequivocally manifests that all grievances pertaining to the CIRP, including objections to the contents or approval of a Resolution Plan, must be ventilated strictly within the statutory framework of the Code. Section 60(5) of the IBC confers the widest amplitude of jurisdiction upon the learned NCLT to examine both factual and legal issues arising from the CIRP, while Section 61 of the IBC provides a robust appellate mechanism before the learned NCLAT. The IBC thus constitutes a complete code, providing for adjudication as well as appellate scrutiny of all issues arising from insolvency proceedings, to the exclusion of parallel or collateral remedies.

36. Here, it is undisputed that the Respondent actively participated in the CIRP by filing its claim before the Interim Resolution Professional. Having invoked the statutory process and submitted its claim for determination, the Respondent was bound by the outcome of the CIRP. If aggrieved by the exclusion of its claim from the Resolution Plan or by the manner of its treatment therein, the Respondent's remedy lay in challenging the Resolution Plan before the learned NCLT or in preferring an appeal before the learned NCLAT under Section 61 of the IBC. The statutory scheme leaves no manner of doubt that any such grievance was required to be raised exclusively in the manner prescribed under the IBC.

37. However, the record reveals that the Respondent failed to invoke the remedies available under the IBC. It neither challenged the Resolution Plan before the learned NCLT nor preferred an appeal before the learned NCLAT, questioning the legality of the plan or the treatment accorded to its claim. Instead, at a belated stage, the

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Respondent sought participation through impleadment before the Hon'ble Supreme Court in proceedings initiated by another creditor in Civil Appeal No. 8411/2019, titled "*Bank of Baroda v. MBL Infrastructures Ltd. & Ors*".

38. It is pertinent to note that the statutory framework of the IBC provides for a further appellate remedy against an order passed by the learned NCLAT by way of an appeal to the Hon'ble Supreme Court under Section 62 of the IBC. However, the scope of such an appeal is deliberately and significantly circumscribed. Unlike the jurisdiction exercised by the learned NCLT and the learned NCLAT, which extends to both factual and legal determinations, an appeal under Section 62 to the Hon'ble Supreme Court is confined strictly to "*questions of law*" arising from the order of the learned NCLAT. Section 62 of the IBC reads as follows:

> "**62. Appeal to Supreme Court. -** (1) Any person aggrieved by an order of the National Company Law Appellate Tribunal may file an appeal to the Supreme Court on a question of law arising out of such order under this Code within forty-five days from the date of receipt of such order.
> (2) The Supreme Court may, if it is satisfied that a person was prevented by sufficient cause from filing an appeal within forty-five days, allow the appeal to be filed within a further period not exceeding fifteen days."

39. This statutory limitation clearly indicates the legislative intent to restrict the Hon'ble Supreme Court's role to examining substantial legal issues, rather than permitting a reappreciation of evidence or reconsideration of factual findings. Consequently, the jurisdiction of the Hon'ble Supreme Court under Section 62 of the IBC is markedly narrower in comparison to that of the learned NCLT and learned NCLAT, both of which are vested with comprehensive authority to

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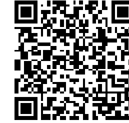

examine and adjudicate upon factual as well as legal aspects of disputes arising during the corporate insolvency resolution process.

40. In the present case, despite having an alleged grievance in relation to the resolution process, the Respondent failed to avail itself of the statutory remedies at the appropriate stages before the learned NCLT or the learned NCLAT. Instead of challenging the Resolution Plan or the treatment of its claim within the framework expressly provided under the IBC, the Respondent sought to approach the Hon'ble Supreme Court directly. Even assuming that such an approach was entertained, the limited jurisdiction under Section 62 of the IBC necessarily constrained the scope of scrutiny before the Hon'ble Supreme Court to substantial questions of law alone. As a result, the Respondent could not have sought, nor could the Hon'ble Supreme Court have undertaken under the IBC, a comprehensive reappraisal of the underlying factual matrix, including the merits, quantum, or treatment of the Respondent's claim within the CIRP.

41. It is further evident from the record that although the Hon'ble Supreme Court did consider the issues raised in the proceedings, particularly in the context of objections advanced by another creditor concerning the judicial interpretation of Section 29A(h) of the IBC, it ultimately declined to interfere with the approved Resolution Plan. The mere fact that certain issues were examined at the level of the Hon'ble Supreme Court, in the absence of any modification, setting aside, or substantive interference with the Resolution Plan, does not enure to the benefit of the Respondent. Participation in such proceedings, or impleadment therein, cannot be construed as recognition, validation, or revival of the Respondent's claims. On the

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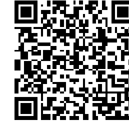

contrary, the refusal of the Hon'ble Supreme Court to interfere unequivocally reinforces the finality and binding nature of the Resolution Plan. In such circumstances, no surviving cause remains for the Respondent to agitate its claims in collateral proceedings outside the statutory framework of the IBC.

42. It is a matter of record that the Respondent did, in fact, approach the Hon'ble Supreme Court; however, no substantive relief was granted in its favour. In such circumstances, if the Respondent remained aggrieved by the non-grant of relief, it was incumbent upon it to pursue appropriate remedies before the Hon'ble Supreme Court itself, in accordance with law. This would have included seeking review, recall, clarification, or modification of the order, as permissible within the procedural framework governing the Apex Court's jurisdiction. The Respondent, however, failed to avail any such remedy. This omission is of considerable legal significance.

43. Once the Hon'ble Supreme Court, upon due consideration, did not grant any relief, and the Respondent failed to avail itself of any further legally permissible remedies, such as review, recall, or clarification, the matter attained finality in the eyes of law. In such circumstances, no part of the Respondent's claim, irrespective of its perceived legitimacy, can be said to have survived or remained open for subsequent adjudication. The legal consequence of such finality is that the Respondent is precluded from seeking to revive or enforce the very same claims in collateral proceedings, including arbitral proceedings. To permit such an exercise would amount to circumventing the binding effect of the adjudicatory process and undermining the conclusiveness attached to the outcome. The absence

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of any affirmative relief in favour of the Respondent, when read together with its failure to pursue further remedies within the prescribed legal framework, leads to the inevitable conclusion that no enforceable or subsisting claim remains thereafter.

44. With utmost respect to the learned Arbitrator, this Court is unable to concur with the view that the mere inclusion of the Respondent in the list of creditors during the CIRP, or its impleadment as a creditor in proceedings before the Hon'ble Supreme Court, confers upon it any substantive or independent right beyond what is expressly contemplated under the IBC.

45. The IBC is a special and self-contained legislation, having overriding effect by virtue of Section 238 of the IBC, and it exhaustively delineates the rights, remedies, and forums available to stakeholders. The Respondent, having failed to exercise the remedies provided under the statute at the appropriate stage, cannot, at a later point, seek to derive substantive rights merely on account of its participation in initial stages of the CIRP or by virtue of impleadment in appellate proceedings. Any such recognition of rights *dehors* the statutory framework would run contrary to the scheme of the IBC and would undermine its efficacy.

46. Accepting the Respondent's contention that its claims may nevertheless be pursued through proceedings outside the IBC framework, *inter alia,* through arbitration would effectively permit a challenge to a conclusory and cemented Resolution Plan. This would not only circumvent the exclusive jurisdiction conferred upon the fora under Chapter VI of Part II of the IBC but would also erode the finality that attaches to insolvency proceedings.

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47. That apart, it is a well-settled principle of law that a party who fails to assert its rights diligently within the time and manner prescribed by law cannot subsequently seek to revive such claims after an inordinate and unexplained delay, or in collateral proceedings. The maxim *vigilantibus non dormientibus jura subveniunt* - the law assists the vigilant and not those who sleep over their rights - squarely applies in such circumstances. A litigant cannot be permitted to circumvent the consequences of its own inaction by attempting to indirectly agitate the same claims in separate proceedings.

48. In the present case, where the Respondent had ample opportunity to pursue its remedies within the statutory framework of the IBC but chose not to do so, cannot now seek to reopen or re-agitate those very claims under the guise of arbitral proceedings. Permitting such a course would undermine the principles of finality, certainty, and procedural discipline, and would defeat the legislative intent underlying limitation and adjudicatory frameworks.

49. The doctrine of finality, as embedded in Section 31 of the IBC and reinforced by the appellate structure under Sections 60, 61, and 62, ensures that all disputes pertaining to the claims of creditors are conclusively determined within the CIRP framework itself. Once a Resolution Plan is approved and attains finality within the statutory hierarchy contemplated under the IBC, the claims of all stakeholders stand crystallized and cannot be resurrected through resort to extra-statutory proceedings and certainly not in the manner as sought in the present matter. To hold otherwise would defeat the fundamental objectives of the insolvency regime, *namely*, to ensure certainty, bring closure to claims, and provide a clean slate to the corporate debtor

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emerging from the resolution process. Any attempt to reopen settled claims outside the framework of the IBC would not only undermine the sanctity of the Resolution Plan but also destabilize the insolvency regime as a whole.

50. In the Impugned Arbitral Award, the learned Arbitrator has sought to distinguish the present case from the settled jurisprudence relating to the "*clean slate doctrine*" by observing that the said principle, as evolved by the Hon'ble Supreme Court, is primarily intended to protect a *bona fide* third-party resolution applicant who takes over the corporate debtor. It has been further reasoned that where the resolution process does not involve the induction of an unrelated third party, but instead results in restructuring under the existing promoter or management, the rationale underlying the clean slate doctrine would not strictly apply. On this basis, the learned Arbitrator proceeded to distinguish, and effectively disregard, the binding precedents of the Hon'ble Supreme Court relied upon by the Claimant in support of the clean slate principle.

51. Again, with utmost respect to the learned Arbitrator, this Court is unable to agree with the aforesaid distinction. Such a differentiation between third-party resolution applicants and existing promoters finds no basis in the statutory framework of the IBC, nor is it supported by the jurisprudence laid down by the Hon'ble Supreme Court.

52. Learned counsel for the Respondent has also sought to advance a similar line of reasoning, contending that since the Resolution Plan in the present case was submitted by the promoter of the corporate debtor itself, and did not involve the entry of an unrelated third-party resolution applicant, the underlying rationale of the clean slate

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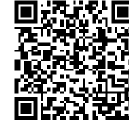

doctrine stands diluted. According to this submission, creditors such as the Respondent would remain entitled to pursue their claims notwithstanding the approval of the Resolution Plan.

53. This contention, though *prima facie* appealing, proceeds on a fundamentally erroneous understanding of the statutory scheme of the IBC. The clean slate doctrine does not emanate merely from considerations of commercial fairness towards a new or incoming management. Rather, it flows directly from the statutory mandate embodied in Section 31 of the IBC, which accords binding force and finality to a Resolution Plan once it is approved by the learned Adjudicating Authority. The provision does not create, either expressly or by necessary implication, any distinction between cases where the corporate debtor is taken over by a third-party resolution applicant and those where restructuring takes place under the aegis of the existing promoter or management. The binding nature of the Resolution Plan attaches to the corporate debtor as a juristic entity, and not to the identity of the person who ultimately assumes control over its management.

54. Put differently, the legislative design of Section 31 of the IBC is not predicated upon affording protection to a particular category of resolution applicants, but upon ensuring certainty, finality, and institutional integrity within the insolvency resolution framework. Once a Resolution Plan is approved, it becomes binding upon the corporate debtor and all its stakeholders, including creditors, employees, and members. The legal consequence of such approval is that the corporate debtor emerges from the CIRP with its liabilities conclusively determined in terms of the Resolution Plan. The IBC,

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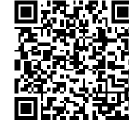

therefore, operates on the principle of continuity of the corporate personality, rather than on the identity of the management controlling that personality at any given point in time.

55. The Respondent's argument, if accepted, would give rise to a serious jurisprudential anomaly. It would imply that the statutory finality attached to an approved Resolution Plan is contingent upon the identity of the resolution applicant, thereby introducing uncertainty into a regime that is designed to provide closure. Section 31 of the IBC employs language of the widest amplitude by declaring that the approved Resolution Plan shall be binding on the corporate debtor and all stakeholders. The focus of the provision is thus on the determination and extinguishment of liabilities of the corporate debtor, and not on the identity of the individual or entity assuming control of its management.

56. Furthermore, it is pertinent to note that while the IBC does prescribe eligibility criteria for resolution applicants, *for instance,* under Section 29A of the IBC, which disqualifies certain categories of persons from submitting a resolution plan, the operation of such provisions is confined to the stage of consideration and approval of the Resolution Plan. Once a Resolution Plan has been duly approved by the learned Adjudicating Authority and the Appellate fora, taking into account the factual matrix of the case and in accordance with law, its validity and binding effect cannot thereafter be assailed on the basis of the identity or eligibility of the resolution applicant.

57. The statute does not contemplate any exception to the finality of an approved Resolution Plan on this ground, particularly after the plan has attained finality within the statutory framework, including

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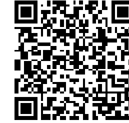

exhaustion of remedies up to the Hon'ble Supreme Court. To permit such a challenge at a belated stage, or to carve out an artificial distinction based on the identity of the resolution applicant *post facto*, would be contrary to the express scheme of the IBC.

58. This Court is therefore of the considered view that the clean slate doctrine must be understood not as a privilege conferred upon a particular class of resolution applicants, but as a structural principle integral to the insolvency framework itself. The doctrine ensures that once a Resolution Plan is approved and implemented, the corporate debtor can continue its operations free from the burden of past liabilities, except to the extent expressly provided in the plan. It is this principle that safeguards the efficacy and credibility of the insolvency process.

59. The Respondent's attempt to circumvent this statutory finality by contending that the clean slate doctrine is inapplicable where the corporate debtor continues under the stewardship of its existing promoter is, therefore, wholly misplaced. The doctrine does not turn upon the identity of the resolution applicant but upon the binding and conclusive effect of the Resolution Plan on the corporate debtor. To accept the Respondent's contention would enable creditors to revive their claims through collateral proceedings merely by pointing to the identity of the post-resolution management. Such an interpretation, unless expressly provided by law, would defeat the legislative intent underlying Section 31 of IBC and would destabilize the insolvency regime by depriving it of certainty and closure.

60. Viewed in this light, the Respondent's contention that the clean slate doctrine is inapplicable in the present case on account of the

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Resolution Plan having been implemented by the existing promoter cannot be sustained. The statutory consequences of the approval of a Resolution Plan remain uniform and unqualified, irrespective of the identity of the resolution applicant. Once the Resolution Plan has been approved and has attained finality within the framework of the IBC, the liabilities of the corporate debtor stand conclusively determined. The Respondent cannot, therefore, be permitted to resurrect its claims through arbitral counterclaims, which in effect seek to reopen issues that have already been settled within the insolvency resolution process.

61. During the course of arguments before this Court, learned counsel for the Respondent, in an attempt to assail the validity and finality of the Resolution Plan, placed strong reliance upon the Judgment of the Hon'ble Supreme Court in ***Rainbow Papers*** *(supra)*, as well as the decision of the Madras High Court in ***The National Sewing Thread*** *(supra)*, the latter having substantially relied upon the former.

62. Relying upon ***Rainbow Papers*** *(supra)*, it was contended that the approval of a Resolution Plan under Section 31 of the IBC is conditional upon strict compliance with the requirements of Section 30(2) of the IBC, and that the learned Adjudicating Authority is duty-bound to ensure such compliance prior to granting approval. It was further submitted that the said judgment clarifies that the binding effect of a Resolution Plan under Section 31 of the IBC is not absolute, and cannot be invoked to override or extinguish legitimate statutory claims which were neither duly examined nor incorporated within the resolution process.

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63. This Court does not, and indeed cannot, take any exception to the aforesaid legal position, which stands settled. However, it is of the considered view that the reliance placed by the Respondent upon ***Rainbow Papers*** *(supra)* is wholly misconceived and misplaced. The said judgment is clearly distinguishable, both on facts and in the context of the statutory framework within which it was rendered. Significantly, the decision in ***Rainbow Papers*** *(supra)* arose in proceedings under Section 62 of the IBC, being an appeal before the Hon'ble Supreme Court against a judgment of the learned NCLAT rendered in the exercise of its appellate jurisdiction.

64. The said judgment, therefore, emanated from a dispute that had traversed the complete adjudicatory hierarchy contemplated under the IBC, beginning with the learned NCLT as the adjudicating authority, followed by an appeal before the learned NCLAT, and culminating in an appeal before the Hon'ble Supreme Court under Section 62. The invocation of Section 62 necessarily presupposes that the aggrieved party has pursued the remedies provided under the statute at each stage of the adjudicatory process.

65. At the cost of repetition, it is reiterated that, in the present case, the Respondent admittedly failed to avail itself of the statutory remedies provided under the IBC to challenge the Resolution Plan before the learned NCLT or the learned NCLAT. Instead, the Respondent chose to approach the Hon'ble Supreme Court directly at a belated stage, where the Court exercises a narrowly circumscribed jurisdiction confined to questions of law. Even in those proceedings, no relief was granted in favour of the Respondent. Having consciously elected not to pursue the statutory mechanism at the appropriate stage,

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the Respondent cannot now seek to rely upon a precedent rendered in the exercise of appellate jurisdiction under Section 62 of the IBC, where the matter had travelled through the prescribed adjudicatory hierarchy, in an entirely different procedural setting, *namely,* arbitral proceedings. Such reliance is legally untenable.

66. The invocation of ***Rainbow Papers*** *(supra)* in the present proceedings to question the finality of a Resolution Plan that has attained conclusiveness, even up to the level of the Hon'ble Supreme Court, is therefore clearly misplaced. The said judgment arose in the context of a challenge pursued through the proper statutory hierarchy under the IBC, whereas in the present case, the Respondent seeks to bypass that very framework and reopen the consequences of the Resolution Plan through collateral arbitral proceedings. Such an approach is impermissible in law.

67. The Respondent has also placed vehement reliance upon the judgment of the Madras High Court in ***The National Sewing Thread*** *(supra)*. It was contended, on the strength of the said decision, that the clean slate doctrine cannot be applied mechanically or universally in all cases, and that its applicability must be assessed in light of the factual matrix, particularly where issues of fairness, transparency, and disclosure obligations during the CIRP are implicated. It was further argued that where the same promoters or substantially identical management continue to control the corporate debtor post-resolution, the clean slate doctrine cannot be invoked to extinguish claims that were not disclosed during the CIRP, especially where there existed a duty on the suspended management to make full and complete disclosure of liabilities.

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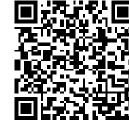

68. At the outset, it must be noted that the Judgment of the Madras High Court, in any event, carries only persuasive value. However, even without entering into a detailed factual distinction or addressing the selective propositions advanced by the Respondent, this Court, with due respect, is unable to agree with the underlying reasoning of the said decision to the extent it permits reopening or re-examination of issues arising from CIRP proceedings that have already attained finality in accordance with law. The reasons for such disagreement have already been elaborated in the preceding portions of this judgment. It suffices to reiterate that the findings in the said case were rendered in a separate and subsequent proceeding, after the culmination of the CIRP.

69. Furthermore, and as is evident, this is not a case that the claims remained hidden or undisclosed. This is a case where the claims were disclosed and considered and whereupon a resolution plan came to pass.

70. In the considered opinion of this Court, permitting such an approach, whereby the validity or effect of an already approved Resolution Plan is revisited, commented upon, or effectively reopened in subsequent or collateral proceedings, would have far-reaching and deleterious consequences for the statutory framework of the IBC. The IBC is fundamentally premised upon ensuring finality, certainty, and conclusiveness of an approved Resolution Plan, so as to facilitate the revival and continued operation of the corporate debtor.

71. If courts were to permit the reopening or indirect challenge to such plans in proceedings outside the statutory framework of the IBC, it would render every CIRP perpetually vulnerable to challenge, even

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after approval by the learned Adjudicating Authority and affirmation at the highest judicial levels. Such a position would defeat the very objective of the IBC, create uncertainty for stakeholders, and undermine the sanctity and efficacy of the insolvency resolution process. This Court, therefore, cannot countenance any proposition that allows concluded CIRP proceedings to be reopened in collateral proceedings, and accordingly rejects the reliance placed by the Respondent on the aforesaid judgment.

72. In view of the foregoing discussion, this Court is of the considered opinion that the precedents relied upon by the Respondent do not advance its case. None of the said authorities authoritatively deal with a situation where, after the conclusion of the CIRP and after the Resolution Plan has attained finality, including at the level of the Hon'ble Supreme Court, claims are sought to be enforced through an independent or collateral adjudicatory forum. The controversy in the present case must instead be examined in light of the statutory consequences that flow from the approval of a Resolution Plan, as well as the doctrine of finality, which lies at the very core of the insolvency framework under the IBC.

CONCLUSION:

73. In view of the foregoing analysis, this Court is of the considered opinion that the finding returned by the learned Arbitral Tribunal on Issue No. 6 is unsustainable in law, as it does not accord with the statutory scheme of the IBC, particularly the binding force and finality attached to an approved Resolution Plan under Section 31 of the IBC.

74. Once the corporate insolvency resolution process attains finality

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within the statutory framework contemplated under the IBC, the claims of all stakeholders stand crystallized and are thereafter governed exclusively by the terms of the Resolution Plan. Such claims cannot be revived, re-agitated, or pursued through proceedings outside the insolvency mechanism. The contrary view adopted by the learned Arbitral Tribunal, which permits the resurrection of such claims in arbitral proceedings, runs counter to the legislative intent and the settled legal position, and is therefore liable to be set aside.

75. It necessarily follows that the adjudication undertaken by the learned Arbitral Tribunal on Issue No. 5, concerning the merits of the counterclaims, as well as the findings rendered, in part, on Issue No. 7 relating to post-award interest on such counterclaims, are vitiated, as they rest entirely upon the foundational determination under Issue No. 6. Once the finding on Issue No. 6 is held to be legally untenable, the consequential determinations granting relief on the counterclaims cannot independently survive.

76. Accordingly, the Impugned Arbitral Award, to the extent it upholds the maintainability and grants relief in respect of the counterclaims, is liable to be interfered with in exercise of jurisdiction under Section 34 of the A&C Act, and is set aside to that extent.

77. As a natural corollary of the above findings, all consequential proceedings arising from or premised upon the counterclaims must also fail. The outcome of the present Petitions, including those seeking enforcement and those challenging the counterclaims, is therefore determined as follows:

A. *O.M.P. (ENF.) (COMM) 281/2025*

78. Insofar as ***O.M.P.(ENF.)(COMM) 281/2025*** is concerned, the

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same proceeds on the premise that the counterclaims, as allowed by the learned Arbitral Tribunal, are valid and enforceable. In view of the findings recorded hereinabove, whereby the counterclaims themselves have been held to be legally unsustainable and the award to that extent has been set aside, the said petition does not survive. It is accordingly dismissed.

79. No order as to costs.

B. *O.M.P. (COMM) 469/2025 and O.M.P. (COMM) 470/2025*

80. Insofar as the cross-objection petitions filed by the respective parties are concerned, to the extent they arise out of or relate to the counterclaims adjudicated by the learned Arbitral Tribunal, the same are rendered infructuous in light of the setting aside of the award on counterclaims. Consequently, any challenge, claim, or right predicated upon such counterclaims does not survive, and the said petitions are rejected to that extent.

81. However, insofar as any challenges to the Impugned Arbitral Award relating to the claims of MBL Infrastructure (*the claimant in the arbitral proceedings*) are concerned, it is clarified that the merits of those claims have not been examined in the present judgment.

82. Accordingly, for consideration of those aspects, list on 09.09.2026.

HARISH VAIDYANATHAN SHANKAR, J.

MAY 04, 2026/sm/kr

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